

89-158

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

JUL 19 1990

JOSEPH F. SPANIOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1990

PATRICIA M. BOURKE,

Petitioner

V.

Jeanne Schuman  
William Gibbs  
David Himmelman,

Respondents

PETITION FOR WRIT OF CERTIORARI  
TO ISSUE TO  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Part II of Appendix

Patricia M. Bourke  
Attorney at Law  
P.O. Box 415  
Walnut Creek, California  
94596  
PH. (415) 944-4718  
Attorney in Pro Per  
Counsel of Record



SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

June 1, 1987

M. Jeanne M. Schuman  
Office of William Gibbs  
1955 Mountain Blvd.  
Oakland, California

Re: Patricia M. Bourke/  
v. Jeanne Schuman  
No. 86-1653

Dear Ms. Schuman:

The Court today entered the following  
order in the above entitled case:

The petition for a writ of certiorari is  
denied.

Very truly yours,

Joseph F. Spaniol, Clerk

0061

FILED JUN. 22, 1984

OAKLAND-PIEDMONT MUNICIPAL COURT  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

Patricia M. Bourke,	)	
	)	
Plaintiff	)	
vs-	)	
	)	No. 389281
Jeanne Schuman, et al	)	
	)	
Defendants.	)	AMENDED CROSS-
	)	COMPLAINT FOR
	)	DAMAGES
	)	
Related Cross-Action	)	
	)	

IN THE FIRST TWO CAUSES OF ACTION SCHUMAN CLAIMED TO HAVE BEEN "EMPLOYED" BY BOURKE UNDER AN ORAL AGREEMENT AND ENTITLED TO A "REFERRAL FEE" ON BOTH SOCIAL SECURITY CASES. THE THIRD CAUSE OF ACTION CLAIMED BREACH OF CONTRACT RELATIVE TO HER LATER OFFICE TENANCY. THE FOLLOWING ARE THE FOURTH AND FIFTH CAUSES OF ACTION SET FORTH IN SCHUMAN'S AMENDED CROSS-COMPLAINT WHICH ARE THE CAUSES OF ACTION CONCERNED WITH HER ALLEGATIONS OF DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

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FOURTH CAUSE OF ACTION  
DEFAMATION

37. Cross-Complainant Schuman incorporates by reference paragraphs 1-7; 9-16; 19-28.

38. Schuman is ignorant of the true names and capacities of Cross-Defendants sued herein as Does I through X inclusive, and therefore sues these Cross-Defendants by such fictitious



names. Schuman will amend this complaint to reallege their true names and capacities when ascertained. Schuman is informed and believes and therefore alleges that each of the fictitiously named Cross-Defendants are responsible in some manner for the occurrences herein alleged and that Schuman's damages as herein alleged were proximately caused by their conduct.

39. Cross-Defendants, Doe I through X, at all times herein mentioned were the agents and employees of their co-cross-defendant Patricia Bourke and in doing the things herein alleged were acting within the course and scope of such agency and with the permission and consent of their co-cross-defendant.

40. At all times herein mentioned, Schuman has resided and maintained her occupation in the City of Oakland, and for five years has enjoyed a good reputation both generally and in her occupation as an attorney.

41. That on or about May 19, 1981, Schuman was offered a full-time attorney position with the law offices of Mintz, Giller, Himmelman &

Mintz and has been employed since June 1, 1981 as an associate of said firm.

42. On or about May 26, 1981, Bourke, Does I through X, published a letter to David A. Himmelman of the law firm of Mintz, Giller, Himmelman & Mintz, which stated in part "...I am cognizant of the possibility that inasmuch as Ms. Schuman left my employ under very adverse circumstances, she may have invented, twisted or exaggerated "her" remarks for her own spiteful purposes." A copy of said letter is attached hereto as Exhibit A1 and incorporated by reference.

43. Said letter was received by the law firm of Mintz, Giller, Himmelman & Mintz on May 27, 1981.

44. On or about October 20, 1981, Bourke, Does I through X, again published a letter to David Himmelman of the Law Firm of Mintz, Giller, Himmelman & Mintz which stated in part that Schuman "forcibly took files from (her) secretary" which necessitated calling the police, made misrepresentations to clients, was terminated from Bourke's office and improperly used firm money. Said letter is

attached hereto as Exhibit A2 and incorporated by reference.

45. That Bourke, Does I through X, published the following series of letters to Schuman's client Jean Staska which stated in part that:

(a) April 23, 1981 letter - "cross-complainant had been assigned by (cross-defendant) to undertake Mrs. Staska's representation and has no further authorization or authority to represent you in any way.." The foregoing is only an excerpt of said letter which is attached hereto as Exhibit B1 and incorporated by reference.

(b) April 29, 1981 letter - that Schuman has been both "indiscreet and unprofessional", "unethical and improper", terminated by Bourke for undisclosed reasons, "been acting against the interests of the firm for some time", "empty", "childish", and "spiteful". Bourke further stated that Schuman "virtually stole (Ms. Staska's) file and the file of another social security case which necessitated calling the police "who were satisfied after I showed them my records, the files, in fact,

belong to the firm." The foregoing are only excerpts from said letter which is attached hereto as Exhibit B2 and incorporated by reference.

(c) September 10, 1981 letter - that Schuman "took out of the (attorney fees in Staska matter) what she liked and sent the rest by a check which bounced. She is now making threats to take money from the other social security check which involves another case. In the meantime, even though they admit that I was employing attorney, SSI sent me a letter saying they would tell me nothing..." "Ms. Schuman stole your file.." The foregoing are only excerpts from said letter which is attached hereto as Exhibit B3 and incorporated by reference.

(d) September 23, 1981 letter - that Schuman was "cheating her employer". The foregoing is only an excerpt from said letter which is attached hereto as Exhibit B4 and incorporated by reference.

46. That Bourke published the following series of letters to Schuman's client William

Hornof which stated in part that:

(a) April 23, 1981 letter - Schuman "...had been assigned by (cross-defendant) to undertake (Mr. Hornof's) representation and has no further authorization or authority to represent you in any way.." The foregoing is only an excerpt of said letter which is attached hereto as Exhibit C1 and incorporated by reference.

(b) September 9, 1981 - Schuman was terminated by Bourke "for not giving good quality service to clients on a regular basis" and "did not properly handle files" and that Schuman has "shown herself to be vicious and dishonest", "spiteful" and "stealing fees from her" and that Schuman "was taking fees which were not rightfully hers". The foregoing are only excerpts of said letter which is attached hereto as Exhibit C2 and incorporated by reference.

47. Each and every one of the foregoing statements contained in paragraphs 42, 44, 45, 46 are false as they apply to Schuman.

48. That at all times herein mentioned each and every publication contained in Paragraphs 42, 44, 45, and 46 was unsolicited.

49. Each such statements and letters contained in Paragraphs 42, 44, 45 and 46 are libelous on its face. It clearly exposes Schuman to hatred, contempt and ridicule because said language accuses Schuman of criminal acts and being dishonest in her profession.

50. On information and belief, it is alleged that Bourke and Does I through X made the foregoing statements to members of the Bar of California including those particular letters which were sent and read by partners of the firm of Mintz, Giller, Himmelman & Mintz.

51. As a proximate result of the above described publications, Schuman has suffered loss of her reputation as an attorney, shame, mortification, and hurt feelings all to her general damage.

52. Said letters addressed to Mintz, Giller, Himmelman & Mintz, Staska and Hornof

(Exhibits A-C), did additionally contain information regarding Schuman's private affairs.

53. That the aforementioned statements were made by cross-defendants with an evil motive and malice, willful and wrongfully with the intent to injure, disgrace, gain an unfair business advantage and to defame Schuman with wonton and reckless disregard for the truth or falsity of statements made. Furthermore, any such statements were made by cross-defendants with more intensity than justified by the facts surrounding the dispute with Schuman.

54. As a proximate result of each and every publication described herein, Schuman has suffered loss of her reputation, shame, mortification and hurt feelings all to her general damage.

55. That cross-defendants's actions were intentional, reckless, oppressive, outrageous, malicious and were done with the intent to harm Schuman in her professional reputation and general health. Therefore, Schuman requests punitive damages against Cross-

Defendants in the sum of \$15,000.00.

WHEREFORE, Cross-complainant Schuman prays for judgment against Cross-Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

56. Cross-complainant Schuman incorporates by reference paragraphs 1-55 of this complaint.

57. That as set forth hereinabove, Bourke (1) breached contracts with Schuman; (2) made untrue and defamatory statements to clients, employers, and members of the legal community about Schuman, and (3) published private materials about Schuman to Schuman's clients and employers. That in addition, on April 23, 1981, (4) Bourke and Does I through X called police and requested that they arrest Schuman on false charges of theft and (5) prevented Schuman from use of her office. Furthermore, said cross-defendants (6) contacted Schuman's employers at a time when Schuman had terminated her employee/employer relationship with Bourke with acrimony and Schuman's future with her



new employers had not yet become secure.

58. That at all times herein mentioned all statements made by Bourke to the police, Schuman, clients, employers and members of the bar were unsolicited.

59. that the aforementioned statements and acts by Bourke were intentionally done/made by Bourke with evil motive and malice, willful and wrongful and with the intent to injure, disgrace, gain an unfair business advantage and to defame the Cross-complainant Schuman and in particular, were intended to cause Schuman great emotional distress, worry and shock to her nervous system.

60. That as a proximate result of the aforementioned acts/statements by Bourke, Schuman was caused to worry about losing her job and reputation in the legal community which did result in Schuman suffering severe shock to the nervous system and mental distress.

61. That said Bourke's actions were intentional, reckless, oppressive, outrageous and malicious and were done with the intent to

harm Schuman of which results said Bourke was cognizant would be likely. Therefore, Schuman requests punitive damages against cross-defendants in the sum of \$15,000.00.

(PRAYERS OMITTED)

s/ William D. Gibbs

Dated: June 22, 1984

LAW OFFICES OF

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

PATRICIA M. BOURKE

438 - 14TH STREET  
CENTRAL BUILDING, SUITE 315  
OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 339-9708

April 23, 1981

William Hornof  
4444 Sargent Ave.  
Castro Valley, Ca. Re: Social Security Claim

Dear Mr. Hornof:

This letter is written to advise you that my associate, Jeanne Schuman who was assigned by me to undertake your representation in connection with the Social Security Claim(s) is no longer in my employ, and accordingly has no further authorization or authority to represent you in any way.

If you have further need for services or questions about this matter, please feel free to communicate with my office.

Sincerely,

Patricia M. Bourke

Exhibit C1

0073

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

LAW OFFICES OF  
**PATRICIA M. BOURKE**  
436 - 14th STREET  
CENTRAL BUILDING, SUITE 315  
OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 339-9705

May 26, 1981

David A. Himmelman  
Mintz, Giller Himmelman and Mintz  
A Legal Corporation  
405 14th Street  
Oakland, California

Dear Mr. Himmelman:

It is my understanding that you have recently hired Jeanne Schuman as a new associate in your firm. She imparted this information in a recent telephone conversation with my associate, at which time she also chose to make remarks to the affect that you had deliberately not called me for a reference because you were aware of my reputation and that you fully understood why she (Jeanne Schuman) had had problems in trying to deal with me!

At the time of hearing this, I was not even sure who you were. I could not recall even ever having had a case with you. Upon

Exhibit "A"

0074

looking up your picture in a bar directory, I vaguely recall cordially speaking to you on occasion in court. However, I certainly had no negative recollections of any encounter with you which could have provoked such derogatory remarks about me. Consequently, I am left totally baffled.

As any experienced attorney is fully aware, we often encounter one another in an adversarial context with the occasional, attendant unpleasant circumstances, and sometimes we are resultantly left with bad feelings about one another. However, I am particularly disturbed to learn that I have apparently made an enemy and cannot even recall the context or situation. If I have offended you in some way in the past, I would appreciate hearing from you as to why and how so that I might make an appropriate apology.

In the meantime, I am cognizant of the possibility that inasmuch as Ms. Schuman left my employ under very adverse

circumstances, she may have invented, twisted or exaggerated your remarks for her own spiteful purposes. If that were the case, then I believe that you ought to know of her misuse of your name and of her attempt to provoke bad feelings. I would appreciate hearing from you regarding these matters. Feel free to call me at your convenience.

Sincerely,

Patricia M. Bourke

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

LAW OFFICES OF  
**PATRICIA M. BOURKE**  
438 - 14th STREET  
CENTRAL BUILDING, SUITE 315  
OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 330-9706

October 20, 1981

David Himmelman, Esq.  
405 14th Street  
Oakland, California

Re: Jeanne Schuman

Dear Mr. Himmelman:

Events subsequent to our last communications relative to the referenced individual have made it necessary for me to communicate with you again. Since I have no knowledge as to the details of Jeanne Schuman's employment with you, there is a possibility that you and your firm may be a necessary party in litigation with I will shortly be filing against Ms. Schuman. Consequently, rather than naming your office as a co-defendant, I thought it expedient to first inquire as to whether or not your firm is in any manner involved in the activities undertaken by Ms. Schuman since she entered your employ.

Exhibit A1

0077

If Ms. Schuman is a full-time associate with your firm, with no independent practice, then it would seem that you as her employer are a necessary party to litigation I will be filing. The dispute between myself and Ms. Schuman (and possibly you as her principal) involve two Social Security cases wherein Ms. Schuman represented the clients as my associate. Upon leaving my employ, she forcibly took both files from my secretary making it necessary for us to call the police. She thereupon contacted both clients and made statements and representations that she and not the firm was their attorney. Shortly after being terminated by me, she procured a written statement from one client (based upon her own misrepresentations) that he was not a client of the firm and that she and not I was entitled to the files. She took the fee from the one case, endorsed and negotiated the check and thereafter paid me what she considered my share of the fee by a check



which bounced twice. In making her computations she failed and refused to pay rent on a small office I had rented to her after discharging her as my associate. In effect, she took firm money and applied it as she saw fit...after apparently having made use of it for some as yet undisclosed period of time. I am informed and believe that as a result of the adverse claims made by her, my firm has never received the fee on the one case although the work was completed and the application for attorney fees filed last Fall. Whether she has also taken this fee, I do not know.

Because I cannot believe that you would condone, much less be involved in such activities, I am writing you about the matter before naming you as a co-defendant. I do not wish my complaint to be demurrable by reason of having omitted a necessary party.

Additionally, I am mindful of the very real possibility that you may hear a

distorted version of what occurred between Ms. Schuman and myself, particularly after she has been served with the litigation. Consequently, I wish to set the record straight as to what evidence I have that Ms. Schuman has acted improperly and that these clients were clients of my firm. The items of evidence are as follows:

1). I have her time record in her own handwriting where she computes the hours spent on the two (specifically named clients) and then on that basis computes how much I owe her for the pay period. I have several such documents, if you are interested in seeing them let me know.

2). I have a cancelled check where the physician report for one client was paid from my account.

3). I have her letter to me attempting to account for the fee paid to her on the one case and enclosing a check for the bulk of the fee. Why would she have found it necessary to pay the bulk of the fee to me if it were her client?

4). My former associate and my former secretary are prepared to testify under oath to various conversations where Ms. Schuman clearly acknowledged that the specific clients were mine.

5). In the case of one of these clients she filled out the Application for Fees characterizing herself as an associate of mine. Also the files she took from my office contain copy after copy of correspondence on my letterhead showing her as an associate.

6). All Ms. Schuman had to substantiate her claims is her own naked assertion and a statement signed by the client shortly after she was terminated from my office which states he thought she was his attorney and that she could have the files.

Having apparently communicated with my clients after being terminated from my firm without my knowledge or consent, she now presumes to characterize them as her own. Does she do this as a representative of your firm? Recently, she has also sent me a

\* letter threatening me with State Bar complaint if I contact "her" clients. Does she do this as a representative of your firm? She did this on your stationery, hence it is possible that your firm is involved in this controversy.

As an attorney associated in what appears on your letterhead to be a firm, I am sure you realize that this sort of conduct cannot be tolerated or condoned. It is my intention to pursue this matter through all available channels including the State Bar. Hopefully, Jeanne Schuman is taking these actions entirely on her own and without any association with your firm. Consequently, I would ask that you communicate with me relative to your and/or your firm's involvement, if any.

Please also bear in mind that upon your request, I will provide your with any documentation mentioned in this letter to prove whose clients those were. Jeanne Schuman was promised no part of any fee

involved and she was fully paid for all services rendered. If she tells you to the contrary, I trust you will give me the opportunity to demonstrate the true facts are otherwise.

Sincerely,

Patricia M. Bourke

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 339-9708

0084

LAW OFFICES OF

PATRICIA M. BOURKE

JEANNE M. SCHUMAN

SALLY A. SKLAR

PATRICIA M. BOURKE

438 - 14th STREET

CENTRAL BUILDING, SUITE 315

OAKLAND, CALIFORNIA 94612

AREA CODE 415

(OFC.) 485-9441

(RES.) 339-9706

April 29, 1981

Mrs. Jean P. Staska

22838 Alice Street

Hayward, Ca. 94541

Re: Jeanne Schuman  
and Soc. Sec.

Dear Mrs. Staska:

You will have already received a letter from my office relative to your representation and the fact that Jeanne Schuman was no longer employed with me. Since then, I have received information to the affect that Ms. Schuman had taken it upon herself to contact you. I am informed that as a result of something you were told that you were "horrified" at what I was doing!!

While it is highly unusual for attorneys to involve clients in intra office disputes, it appears that Ms. Schuman has been both indiscreet and unprofessional

Exhibit B2

0085

enough to do so thereby making it necessary to defend myself and to explain a few things to you.

In the first place, the ordinary person has had little experience with attorney's offices generally, and consequently has little understanding of how law firms operate with respect to other attorneys who work for them. The typical situation involves a client being referred either to the firm generally or to an attorney with a firm. Even if the person is referred to a specific attorney in a firm this would result in that person dealing nearly exclusively with that attorney. That attorney would sign all papers, would meet with the client and would establish an attorney/client relationship with him or her along with attendant rapport. Typically, the client may rarely if ever see the owners of the firm who are, in effect, the employer of the attorney who deals with the client. However, in this context, it is in no way proper for the attorney representing the



client to impart the idea that the attorney is representing the client in his/her individual capacity as separate and apart from the firm. Occasionally, younger attorneys who are overly ambitious take advantage of the situation and seek to alienate the client from the firm with the thought of one day taking the client for their own when and if they separate from the firm.

Although you may have had little experience with the intricacies of the operation of a law office, I would assume at one time or another you hired someone to do something for you. In so doing, I am sure you had a right to expect that the person would do the job for which they were hired and that they would do nothing against your interests while working for you. While one is employed by another it would seem that this expectation ought to be the very least one could expect. This situation is even more intensified when professional, supposedly ethical persons are involved. By

the same token, it is the responsibility of the owner of a law office to see to it that attorneys employed by him/her perform their jobs in a competent and timely manner. When an attorney ceases to so function, the client's welfare is endangered and the attorney must be terminated.

At all times Jeanne Schuman represented you, she was employed and paid by me. If she ever gave you any impression to the contrary, then all I ask is for you to review the time sheets which are attached showing the hours charged to me on your behalf. Therefore, if she has told you anything different from this she has acted unethically and improperly and demonstrates one among many reasons why she is no longer to be employed by me. I am sure your experience with her was friendly and satisfactory, however, your matter was able to be concluded in a relatively short time with a minimum of technical matters to attend to. Hence, I hope you will keep this fact in mind when you evaluate her and my

relation to her. On the other hand, I worked with her over a year and was able to observe her functioning in many different situation. Obviously, it is not appropriate for me to go into any details or to further explain my reasons for terminating her as my associate.

I am also concerned about another episode which Jeanne Schuman called to my attention when we spoke about your matter. I recall an occasion when you were in my office regarding a Will and I happened in and spoke a few words attempting to assist both you and Jeanne. Jeanne now tells me (attempting to hurt me) that you resented my coming into the room and wondered who I was and who I thought I was!! If you actually said something like that, then I must conclude that Jeanne Schuman has been acting against the interests of the firm for sometime, and that she must have deliberately given you the impression that I was some sort of an "interloper" rather than her employer and your attorney.

Unfortunately, the situation now existing between Ms. Schuman and myself is not limited to unpleasant words. Undoubtedly because of bureaucratic delays, my office has not been paid anything whatever for handling your case. Our fees were to have been sent to us by the Social Security Administration weeks ago. Contrary to our relationship and in an attempt to force me to forego certain sums Ms. Schuman owes me, she threatened to lay claim to all or part of the fees I have waited so long to receive. I am not particularly concerned about this aspect of the matter since I have numerous documents most in her own handwriting which demonstrate quite clearly that she performed all the services for you as my associate. Her attempt to lay such a claim is childish at best. However, aside from such threats, she came into my suite today and virtually stole your file and the file of another social security case right out from the desk of my secretary. When my secretary demanded that she return the

files, she declined! This act is likewise an empty, childish, spiteful gesture inasmuch as the entitlement to the fees is a question of fact and has nothing whatever to do with whom may have the files at the moment. However, as I am sure most people can understand, one cannot permit another person to take things which do not belong to them. When Ms. Schuman responded to our request for a return of the files, we were met with impudence and arrogance and more threats. I called the police who were satisfied after I showed them my records that the files, in fact, belonged to the firm. They took no action immediately, however inasmuch as they first wished to consult with the District Attorney's Office before pressing charges.

Having to write a client such a letter is necessarily disconcerting and embarrassing to me. This places me in the awkward position of having to communicate with a virtual stranger whom believes that her real attorney was Ms. Schuman. No

doubt, you feel loyalty and concern for her. However, I do hope you will keep an open mind, and realize that you may have been proceeding with an inaccurate impression of what was occurring. You may be assured that had Ms. Schuman remained discreet and acted properly in this matter, I would not have found it necessary to in any way involve a client in office problems. Certainly, we all try to hire people to work for us who are compatible and discerning..sometimes it just doesn't work out like we plan.

My purpose has never been to hurt Ms. Schuman. But, I obviously cannot tolerate the inaccurate statements she has made nor can I permit the removal of files and documents from my offices which do not belong to her. I would certainly be willing to speak with you further about this matter if you wish. Since I believe the services to be rendered in your matter have been concluded for sometime, it is unlikely that you would be faced with any choices or decisions in the near future. However, you

could hardly expect me not to defend myself or to fail to bring the dispute regarding your file to your attention. At this point, I just ask that you reserve judgment and that you make no further statements which encourage Ms. Schuman in the impudent course of action she has chosen to undertake.

Sincerely,

Patricia M. Bourke

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

LAW OFFICES OF  
**PATRICIA M. BOURKE**  
438 - 14th STREET  
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OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 328-9708

September 10, 1981

Mrs. Jean Staska  
22838 Alice Street  
Hayward, Ca. 94541

Dear Mrs. Staska:

Unfortunately, I find it necessary to write to you again. This comes about as a result of things which have happened since I last wrote. In spite of my notice to Social Security, they paid the entire attorney fee to Ms. Schuman. She took out of the fee what she liked and sent me the rest by a check which bounced! She is now making threats to take money from the other Social Security check which involves another case. In the meantime, even though they admit that I was the employing attorney Social Security has just sent me another letter (after a five month delay where I heard nothing) saying they would tell me nothing (dates, amounts

Exhibit B3

(0001)



sent etc.) because only Jeanne Schuman's name appeared on the papers. They cite the "Privacy Act" as a basis for making this refusal. Apparently, they are protecting the privacy of the client. This is indeed an odd interpretation of law when one considers that they are apparently in the same breath acknowledging that Jeanne Schuman was working for my firm when she performed the services in question!!

Consequently, because of the lack of cooperation from Social Security it appears that I will have to file suit in Federal Court naming you and the other client as defendants as well as Social Security so as to be entitled to the money due my firm and so as to be able to obtain the necessary information. However, I am told that if the client signs an authorization for me to get the information, that this may be sufficient.

In order that you be brought up to date on recent events and that you may fully understand what occurred between Ms. Schuman

and myself, I am sending you a letter which I have just prepared to send to the other Social Security claimant whose fees have never been received. I am also sending you a copy of the response from Social Security to show you how and why they refused to assist me in any way.

I am also enclosing the authorizations for you to sign to permit me to obtain the necessary information and to retrieve the files from Ms. Schuman.

Because Ms. Schuman stole your file without my knowledge or consent, I do not have your telephone number which I understand is unlisted. Hence, I am severely handicapped in communicating with you. I had hoped you would have called me when I wrote to you last April. I sent you the time records at that time which ought to have demonstrated that Ms. Schuman charged me for the time she spent on her case. Surely, you do not condone her taking any part of the attorney fee besides her salary?

Please send back the authorizations

signed by you as soon as possible. My purpose is not to upset you or to cause you undue concern. However, I have no control over Ms. Schuman's behavior, and unless I obtain client cooperation, I have no choice but to rely on the courts to protect myself especially when I have received such an uncooperative and totally bureaucratic reply from Social Security.

I also ask that you call me on receipt of this letter, giving me your phone number should further need arise to contact you.

Sincerely,

Patricia M. Bourke

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 339-9708

0098

said to you?

I suspect you have not returned the papers to me because you "don't want to get involved". In acting in this manner, you are not only increasing the chances of my having to involve you in a lawsuit, but you are greatly increasing the amount of work and time I must spend to protect myself. My firm was never fully paid for the services we expended for you. I have no knowledge whether the amount Ms. Schuman claimed to have received was correct, nor do I know WHEN she received it. If you bothered to review the materials I sent you, it ought to have been clear that in all likelihood, Jeanne Schuman was only an employee of my office when she represented you. Does it not seem only fair then that I not be put to an inordinant amunt of trouble to learn the basic facts about what fees were paid? These are simply matters of common sense and right and wrong. Surely, you are not attempting to assist Jeanne Schuman to cheat her employer! If Jeanne Schuman is innocent

of any wrong-doing with respect to your case or your file then she ought not to object to my obtaining such simple, basic information. If you wish Jeanne to have your file, then the proper, professional method to accomplish this is to allow me to retrieve it, make what photos I need and return it to you...you may then do with it as you choose. Associate attorneys are never permitted to "snatch" files out of the employing attorneys office as she did.

Certainly, if you are troubled by my request and wish to speak with me, I have told you several times to call me. You do not call. Yet you do not respond to my letters. Do not make it necessary for me to sue anyone about this matter...please do as I ask, or at least, call me so we can discuss this matter further. The request I made is a simple one and one which fairness and right requires that you consent to IF you are interested in doing right.

Sincerely,

Patricia M. Bourke

LAW OFFICES OF

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

PATRICIA M. BOURKE

438 - 14th STREET  
CENTRAL BUILDING, SUITE 315  
OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 339-9705

April 23, 1981

William Hornof  
4444 Sargent Ave.  
Castro Valley, Ca. Re: Social Security Claim

Dear Mr. Hornof:

This letter is written to advise you that my associate, Jeanne Schuman who was assigned by me to undertake your representation in connection with the Social Security Claim(s) is no longer in my employ, and accordingly has no further authorization or authority to represent you in any way.

If you have further need for services or questions about this matter, please feel free to communicate with my office.

Sincerely,

Patricia M. Bourke

Exhibit C1

0101

PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

LAW OFFICES OF  
**PATRICIA M. BOURKE**  
438 - 14th STREET  
CENTRAL BUILDING, SUITE 315  
OAKLAND, CALIFORNIA 94612

AREA CODE 415  
(OFC.) 485-9441  
(RES.) 338-9708

September 9, 1981

Mr. William Hornof  
4444 Sargent Ave.  
Castro Valley, Ca. 94546

Dear Mr. Hornof:

Thank you so much for talking to me by phone regarding the problems I am having with Jeanne Schuman and with Social Security. I realize that your only contact with my office was through Ms. Schuman and that you were probably on good terms with her and felt kindly toward her. On the other hand, having had no personal contact with me, you would not be readily disposed to accept the things I was forced to reveal to you. You must realize that no practicing attorney likes to have to involve her clients in any unpleasantness which involves other counsel who were employed by her.

Exhibit C2

0102



PATRICIA M. BOURKE  
JEANNE M. SCHUMAN  
SALLY A. SKLAR

LAW OFFICES OF  
**PATRICIA M. BOURKE**  
438 - 14th STREET  
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AREA CODE 415  
(OFC ) 485-9441  
(RES.) 339-9705

September 9, 1981

Mr. William Hornof  
4444 Sargent Ave.  
Castro Valley, Ca. 94546

Dear Mr. Hornof:

Thank you so much for talking to me by phone regarding the problems I am having with Jeanne Schuman and with Social Security. I realize that your only contact with my office was through Ms. Schuman and that you were probably on good terms with her and felt kindly toward her. On the other hand, having had no personal contact with me, you would not be readily disposed to accept the things I was forced to reveal to you. You must realize that no practicing attorney likes to have to involve her clients in any unpleasantness which involves other counsel who were employed by her.

Exhibit C2

0103

Consequently, it is with much embarrassment and regret that I find myself having to not only tell you these things, but to attempt to enlist your cooperation. However, as you will hopefully understand after reading this letter, I was really left with little other choice.

Ms. Schuman at all times while working on your case was an employee of my office. She was paid on a weekly basis a salary which paid her in full for all services she performed for you. In order that you need not just take my word for this fact, I am enclosing copies of her time records wherein she would show me what she did each week for each client and the amount of time spent. I would, in turn, pay her a check for the time based upon these time records. Another woman attorney worked for me on the same basis during the time in question and has assured me that she would testify that Jeanne Schuman was only an employee and was entitled to no part of the fee which was to have been paid by Social Security on your

behalf. I also have a cancelled check wherein we paid for your physician's report off of my checking account. I will enclose a copy of the check if I can locate it before this letter is mailed.

About the same time she was working on your Social Security claim, another claim was also being processed (Staska) by her. Both these claims were being handled on the same financial basis with Jeanne Schuman being paid a salary and any fee paid by Social Security belonging only to my firm.

As I am sure you are aware based upon your own experience, sometimes employees just do not work out and do not always perform satisfactorily. This became increasingly true of Ms. Schuman during the latter part of 1980 and early 1981. Up to that time our relations has always been cordial. Obviously, as the primary attorney in the office and her employer, I must terminate her if she is not giving good quality service to the clients on a regular basis. However, rather than fire her, I

told her I would rent her an office next to mine and would permit her to conclude the services needed on several pending cases with all new cases to be handled by others. Finally, and during March, April 1981 it appeared that she was not even properly handling the few cases I had left her to do. I asked her to move out of my offices entirely and to return all the files.

It was then for the first time that Ms. Schuman showed herself to be vicious and dishonest. She presented her final pay voucher to me and demanded payment. She owed me a month's rent, she owed for having used my copy equipment on her own cases, she owed a phone bill (I having generously allowed her to use my phones for her own cases), and I genuinely believed she was charging me (spitefully) for more time than she had actually spent on a couple of items. I told her ALL claims I had must be settled at the same time and that I would pay her only the balance due her after deducting for the rent which she owed me. She angrily and

defiantly refused saying that I was to pay her all I owed her and she would pay the rent "later". When I refused, she told me that she would then lay claim to BOTH the fees from your case and from the Staska case and that inasmuch as she had signed the papers as the official "attorney" Social Security would pay her instead of me!! She also claimed that I had agreed to pay her some sort of commission on the Social Security cases (an outright lie). So, I asked her just how much was it I was supposed to have agreed to. She replied "...well, I guess the amount of the rent".

Immediately after hearing these threats, I made numerous telephone calls to Social Security to try to protect myself. I was given several addresses back East where the attorney fees are paid from. I immediately wrote to them and informed them that no fees were to be paid to Ms. Schuman and that if they did not want to pay me, the fees should be held so that I could satisfy them that I was the person entitled. This occurred in

April 1981. In June I received a letter from Ms. Schuman enclosing a check for \$946.32. She had in spite of the notice I gave Social Security received the fees from the Staska case, had deducted every cent she claimed I owed her, paid nothing for rent, and you will note THREATENED TO HANDLE THE HORNOF FEES IN THE SAME MANNER!!! When I attempted to cash her check, it bounced (letter from her bank enclosed)! Hence, it is clear that Ms. Schuman admits the fees belonged to my office, but she apparently intends to receive them and to take out just as much as she pleases! Even though I was eventually able to negotiate her check, it is also clear that she was using my money and paying it over to me when she pleased.

At this point, you can imagine my total dismay at Social Security for having disregarded my notice. It also occurred to me that she just might have received the Staska fees long before any dispute arose and had been using my money all along without informing me. Consequently, I again wrote

to Social Security (none of my letters having been answered) and asked whether the Hornof money had been sent to her, what amount was sent, and when it was sent. I also asked the same questions relative to the Staska money inasmuch as I am otherwise left to trust in what she tells me about the amount she had received. To the extent she received the fees and did not pay them over to me, it would seem that the fees would be continue to be owed by the client, by Social Security or by both. This is especially apt to be the case if the checks were sent to her AFTER my letters notifying them were received.

After some five month<sup>s</sup>, I received the enclosed reply from Social Security which in effect told me nothing. They refused to say whether any other money had or would be disbursed to her, they refused to tell me when the Staska money had been disbursed or the amount, and they claimed the "Privacy Act" prevented them doing so. You will also note that they acknowledge in the same

breath that Ms. Schuman was a "member of my firm"! Consequently, I believe that Mr. Cooper just does not know the law, but he is doing all he can to get rid of me and my problem. Unless, I can obtain the necessary information through the cooperation of the clients involved, I will be left with no choice but to file suit in Federal Court naming both clients, Ms. Schuman and Social Security. As I understand it if the clients sign an 'authorization' then the Privacy Act cited by Mr. Cooper is waived and I can determine just what she has done to me. Rather than attempting to resolve this matter and to do what is right, Social Security has intensified the problem and has caused me to have to write to you. Unfortunately, this sort of response I have found all too typical of civil service.

You should also know that before Ms. Schuman left my offices, she saw the Hornof and Staska filed laying on my secretary's—desk and snatched them away from her! The police were called when she refused to



return them, but they refused to do anything because she claimed to the police she had some sort of right to them. She also told us that the clients had told her it was alright to take them! Hence, the police refused to cite her for theft and advised me to file suit against her. Files such as those belong to the firm and to the client. They are by no means the property of the attorney who just happened to work on them IF that attorney was working on them as an employee. This is just the same as for example an engineer working on a project as an employee of General Motors...he has no right to take such things home and claim them...this is theft. The client may have his/her files, but only after the attorney who represented them (in this case my firm) has had an opportunity to take photo-copies of documents they may need. Obviously, Ms. Schuman deliberately accorded me no such opportunity since she wished to handicap my ability to reach you or to protect myself.

In order to try to avoid the need for

suit being filed, I ask at this time that you sign the enclosed authorizations filling in your Social Security number where indicated. This way, I can determine whether any attorney fees arising from your matter have been disbursed to her, the amount sent to her, and WHEN it was sent. I will need the same information relative to the Staska claim. Only after I have received this sort of information can I determine what to do next about these matters.

Even though you may not wish to "take sides" or "become involved" it hopefully ought to be clear to you that I am rightfully entitled to, at least, know these details. If someone were stealing from you, you would hardly want them to get away with it. Your signing these authorizations will save me a lot of time and effort, and could do away with the possibility that you will be named in a suit which I will have to file in Federal Court if the necessary information and money cannot otherwise be

obtained. Your signing the authorization does not mean that you are siding with me, it only acknowledges that I ought to be able to obtain the necessary information about money which is rightfully owed me.

I am also including a statement whereby you direct Ms. Schuman to return your file to my office which I assure it belongs. If you then want your file yourself, all I ask is that you permit me to photo some of the documents in it. If you then wish Ms. Schuman to have, it would be appropriate for YOU to give it to her. It was in no way proper for her to steal it like she did.

If you have not returned the documents to me in ten days, I will have to assume that you are deliberately trying to assist Ms. Schuman to take fees which are not rightfully hers. I am enclosing a return envelope for your use. I am sure you will understand the problem I face if you do not cooperate. Feel free to call and discuss this if you wish.

Sincerely,  
Patricia M. Bourke

Patricia M. Bourke  
Attorney at Law  
6572 Lucas Ave.  
Oakland, California  
PH: 339-9705

ENDORSED FILED  
7/23/85

Attorney In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA,

COUNTY OF ALAMEDA \*\*

Patricia M. Bourke,	/	
	/	
Plaintiff,	/	No. 601138-3
	/	
vs-	/	DECLARATION OF
	/	CROSS-DEFENDANT
Jeanne Schuman,	/	IN SUPPORT OF
	/	PETITION TO
	/	VACATE
Defendant.	/	ARBITRATION
	/	AWARD

---

I, Patricia M. Bourke, declare and could testify to the following of my own personal knowledge under oath:

BACKGROUND FACTS - NO SUBSTANTIAL DISPUTE

The following facts were adduced at the Arbitration hearing, and except to the extent indicated involved no substantial controversy:

1). The clients Staska and Hornof were initially referred to Schuman by a friend of hers.

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\*\* The motion was initially filed under a new number in Superior Court due to confusion over the court rules. The motion was transferred to municipal court for disposition.

2). I was operating my law offices as a single proprietorship, I was not incorporated, nor was there ever any allegation made by anyone that Schuman had any sort of partnership interest. Schuman was at all times mentioned a full-time employee of mine.

3). She had some limited right to have a small practice of her own. However, apart from her intermittently using my office facilities, these matters were maintained separate and apart from me and my own clients.

4). There was no prior course of dealing between Schuman and myself relative to referrals.

5). The arrangement with me relative to these clients was the same as to each of them.

6). Schuman approached me relative to making a "referral" regarding the Staska and Hornof cases. What was said or intended by this "referral" is in dispute.

7). Schuman procured Mrs. Staska to execute a "Contract for Legal Services" wherein Mrs. Staska was named as the "Client" and "Patricia M. Bourke Law Offices" was designated as

"Attorney". A "Social Security Disability Claim" was indicated to be the subject matter. It was also stated in this contract that "Attorney reserves the right to employ associate counsel at her expense..." It also stated in this contract that the attorney was entitled to retain a duplicate file upon discharge. A true and correct copy of this written contract is appended hereto as Exhibit "A" and is incorporated herein by reference as \*1 though fully set forth.

8). Schuman submitted regular pay vouchers to me to account for the time she had spent, and repeatedly placed the names Staska and Hornof on these vouchers and received her pay from me for this time thusly accounted for. All the other names on the vouchers mentioned along with Staska and Hornof were clients of mine. True and correct copies of these -----

\*1 I was able to obtain this "Contract for Legal Services" only because the client, Mrs. Staska died and the estate representative waived the attorney-client relationship. The Hornof counterpart is still concealed because of Schuman's claims of "attorney/client privilege, which claim of privilege the Arbitrator honored at the hearing...

vouchers are appended hereto as Exhibit "B", and each of which is in the handwriting of Ms. Schuman.

9). Schuman performed all the legal services on the two Social Security cases. I did not meet either client during the processing of these claims.

10). Throughout the processing of these Social Security cases, I paid all expenses, including the physician's report for one client, all office overhead, including Schuman's regular salary, rent, stationery, and library, etc.

11). Schuman submitted a form "Petition to Obtain Approval of Fee..." to the Social Security Administration for Staska which contained the following: "signature of Petitioner...Jeanne Schuman; Firm with which associated, if any: Law Offices of Patricia M. Bourke." A true and correct copy of this document is appended hereto as Exhibit "C".

12). During the latter part of April, 1981 when all the work on the two client's Social Security cases had been earned and requested,

but were, as yet, unpaid, a dispute erupted between myself and Schuman relative to unrelated financial matters. During this dispute, Schuman orally threatened to take the Social Security fees and claimed that the clients were "hers".

13). That same day, Schuman took both these client's case files from my secretary's desk and refused to return them.

14). Shortly thereafter, Schuman went to both clients and procured them to sign a statement prepared by her which stated that she, and not I, was their attorney in the two Social Security cases, and further that she was entitled to both the files and the fees. Schuman thereupon sent copies of these statements to Social Security to assist in inducing Social Security to send her the fees. True and correct copies of each of these statements is appended hereto as Exhibit "DI" and "DII" and are incorporated herein by reference. These statements of the clients of April, 1981, were not, however, made known to me until October, 1981.



15). Both Schuman and these clients thereupon interposed the objection of "attorney/client" privilege when I sought recovery of the files, when I sought information about their discussions about who was the attorney, when I sought documents sent to Social Security, or when I sought discovery of any matter regarding the issues herein involved. These assertions of "attorney/client" privilege were honored by the Arbitrator during the hearing and whenever I sought to question either Schuman or Mr. Hornof regarding their communications concerning the attorney/client relationship.

16). Both Staska and Hornof were unsophisticated persons with little experience in dealing with attorneys or law firms.

17). According to a letter from Social Security which was admitted into evidence, the Staska fee check had been sent to Schuman "in early May". On June 1, 1981, Schuman sent me her personal check for the major part of the Staska fee. She had received and negotiated the check from Social Security, and had

deducted and retained for herself the full  
amount she had claimed in our dispute.<sup>\*2</sup> In  
addition, she had paid nothing to me for rent  
and other office-related expenses I claimed.  
When I took this check to her bank on June 2,  
1981, I was unable to cash it because there  
was "insufficient funds" in her personal  
account. A statement from her bank verifying  
this fact was admitted into evidence.

18) Schuman stated in her letter which  
accompanied the Staska money (letter appended  
hereto as Exhibit "H" and incorporated herein  
by reference) that she would treat the Hornof  
fees in the same manner. Thereafter, and on  
May 24, 1982, and SUBSEQUENT to my having  
written all of the offending letters, she  
tendered the Hornof fees to me.

THE ARBITRATOR EXCEEDED THE SCOPE OF THE  
SUBMISSION: (Excerpts only)

The submission of this matter to  
Arbitration occurred at my suggestion inasmuch  
---

\*2 Schuman had been discharged by me  
immediately on making the threat. In the last  
phase of our relationship she had sub-let an  
office from me and failed to pay rent due. The  
arbitrator awarded me this rent.

as there was no court available at the time set, and it appeared to me that my action on the complaint was the only viable one inasmuch as the cross-complaint referred only to two letters to her employer and certain letters to the clients. Each of these communications were subject to either a qualified or an absolute privilege, were wholly truthful, or at the very least, I had a reasonable basis to believe in their truth. Consequently, I believed that the amount in controversy was too small to warrant the time, attention or formality of a full court trial. I had prosecuted my complaint against Schuman primarily as a matter of principle inasmuch as I did not believe a practicing attorney ought to be permitted to divert funds from her employer and misrepresent her status to clients whom she had referred to me.

I believed the only matters before the Arbitrator were those framed by the Complaint and Cross-Complaint. This belief was corroborated by the fact that months before the arbitration occurred, the Arbitrator

requested copies of both the Complaint and Cross-Complaint: "so that I may familiarize myself with the issues of the case". (Letter from Arbitrator to the parties dated March 27, 1985).

It was then my intention and continued to be my intention to submit to Arbitration only the matters contained in the within Complaint and Cross-Complaint to Arbitration, and nothing else. This is what was before the Municipal Court, and I assumed that this is what would be likewise before the Arbitrator. There was never at any time any agreement or even mention of the matter submitted to the Arbitrator being of any broader scope. Certainly, it was not my intention to grant a carte blanche to an unknown Arbitrator to decide a matter where I had any real chance of being held liable for any substantial sum, let alone thousands of dollars. There simply are not enough safeguards in Arbitration, and the Arbitrators could well be young and unable to analyse the facts or law as well as a Judge. It was certainly not my intention to permit

this arbitrator to decide my liability for EIGHT OR MORE SEPARATE, DISTINCT TORTS WHICH WERE NOT PLEADED OR REFERRED TO IN ANY WAY IN THE PLEADINGS.

In point of fact, the Social Security letters referred to in the Arbitrator's decision as forming the basis for the large awards against me, were ADMITTED INTO EVIDENCE BY ME in order to demonstrate the extent of my incidental damages arising from the time I and my staff had spent as a result of the threatened conversion of the Social Security fees by Schuman.

At no time was there any offer or mention of any desire by Schuman or her attorney to amend the Cross-Complaint to state any new or different bases for her claim of defamation. At no time did he refer to these series of letters as forming the basis for anything other than what they were admitted to show (i.e. incidental damages for conversion pursuant to C.C. 3336) Had he done so, my objections could have been registered and explained.

While the "prejudice" inherent in any hearing being handled this manner is self-evident, it is important to review the operative factors so that there will be no doubt as to the surprise and grave prejudice suffered by the Cross-Defendant.

Apart from there being no agreement to submit this sort of exposure to Arbitration, I had no NOTICE and hence no opportunity to review these letters or even try to justify or explain their content. In fact, insofar as I knew, their content was not in issue ... Likewise, I had not briefed the separate line of case law relative to privilege arising from communications with administrative agencies.

In addition, and having relied that the pleadings before the Municipal Court had established the parameters of what was before the Court and the Arbitrator, I had made no attempt to make any claim against any insurance I may have, nor did I procure counsel to represent me. I did not prepare nor expect to have to defend any greatly expanded defamation case.

What nonetheless occurred here was that this Arbitrator HEARD, TRIED, AND DECIDED as many as SEVEN DISTINCT, SEPARATE, AND WHOLLY UNPLEADED TORTS, without so much as according any warning or notice to me of his intention to do so!!!

UNDERLYING CUSTOMS AND PRACTICES OF THE  
LEGAL PROFESSION: (excerpts only)

When Schuman told me she wished to refer these clients to my office, she said nothing which would indicate that anything other than an outright referral was intended. She said nothing about expecting or demanding any referral fee, and I would not have agreed to pay any "referral fee" inasmuch as the cases were relatively small, marginally profitable Social Security claims.

On the other hand, Ms. Schuman testified at the Arbitration Hearing that she was "only referring the fee", and that she wanted the "normal referral fee".

Based upon my experience, a referring attorney gives up the case, the client, the files and any resulting fees. These rights

continue to reside in the attorney to whom a case is referred until there has been a formal Substitution of Attorneys. However, when I questioned Schuman on cross-examination during the Arbitration hearing as to whether she had ever actually told me at anytime prior to our dispute in April, 1981 (when all the work was done and she had already been paid by me for doing it) that these were not "my clients", her only response was that she had referred to them as "her clients" in my presence. (Appended hereto as Exhibit "E" is an excerpt from her deposition wherein her testimony on this critical issue was very similar to what she stated during the Arbitration). Consequently, and based upon her own admissions, no such clear explanation was ever given to me. If she were not referring the client, then why did she not put her own name on the Retainer Agreement (Exhibit "A")??

Having been given reasonable cause to believe that Schuman had made a normal, outright referral of both these clients to me, that belief, in turn, led me to conclude that



when Schuman interacted with these clients, she was doing so only as my agent and employee.

Should an associate working under such circumstances receive any fees, she would be legally obligated to immediately turn them over to her employer. She may not make even temporary personal use of such funds. Should the associate do so, it is my understanding, that the associate has misappropriated funds entrusted to her and has accordingly acted in a highly illegal and unethical fashion.

Consequently, when Ms. Schuman threatened to take these fees and then, in fact, exercised dominion and control over them, and also misrepresented her status to both clients (Exhibits "DI" and DII"), she was committing acts of conversion, was being dishonest and very unethical, and I felt justified in contacting the clients and others who could assist me to protect myself.

MY TESTIMONY - LETTERS TO CLIENTS  
(Excerpts only)

The content of each of these letters dealt

exclusively with this dispute, both these clients were directly involved in this dispute, and everything that I told them I believed to be absolutely true.

However, in spite of my urgings and explainings the clients refused to contact me, and refused to sign an authorization for me to obtain any information from the Social Security Administration or from their files.

#### LETTERS TO SCHUMAN EMPLOYER (Excerpts only)

Shortly, after Schuman left my employ, I stood at my secretary's desk as she spoke to Schuman (by phone). Ms. Bryan asked her how she had been able to get employment there with Mr. Himmelman without a reference from Pat. Immediately after terminating this conversation, Ms. Bryan quoted Ms. Schuman as having told her that Mr. Himmelman had said: "He did not need any reference from her, because he knows what she is."

My sincere belief was that he did not say this about me and that Schuman had made the statement for spite. Mr. Himmelman wrote back saying that he had not made any such statement

and that there had been no adverse relationship. He so stated in his responsive letter which was put into evidence and reiterated this at the hearing.

This letter was written to one with a mutual interest and in order that any possible ill-will between us be resolved inasmuch as we practiced in the same community.

Subsequently, however Ms. Schuman wrote me several letters making threats, laying claim to the clients and the like (e.g. Exhibit "J") on stationery of Mr. Himmelman where she was indicated to be his agent/associate. I had no knowledge whether he permitted her to have any practice independent of him. Was she claiming Staska/Hornof as clients on his behalf? Were her threats regarding the fees dispute made as his agent? The statements made in that letter (Exhibit A1) were all true and the majority of them are directly corroborated by the writings involved. All the foregoing was explained to the Arbitrator.

SOCIAL SECURITY LETTERS.(Excerpts only)

Inasmuch as the Arbitrator used these

letter, in part as a basis for the large award against me even though none of these letters were pleaded, it is indicated to give a short explanation of my purpose in writing them.

When Schuman told me that she would take the Social Security fees if I did not pay her the amount(s) in dispute, I immediately wrote to Social Security to prevent this misappropriation of funds.

...I had no choice but to contact Social Security again to attempt to determine the amount of money involved, to urge that it be sent to me, and to try to obtain copies of the Petition and other documents which would corroborate that Schuman had processed these claims only as my associate.

... I was told that everything was confidential and that if I wanted information or documents I needed authorization from Schuman or the clients! Finally by June, 1981, I knew that contrary to my urgings they had sent her the Staska fee and that she had withheld it and made temporary use of it. I did not want similar intermeddling with the

Hornof check... If she had received the Hornof check, then I needed to know WHEN and in what amount so that I could sue.

TESTIMONY OF SALLY SKLAR (Excerpts only)

Mrs. Sklar was the associate who was employed along with Ms. Schuman when the operative facts herein occurred. ...it was her conclusion that both these cases were office cases, and had been told by Schuman that the cases had been referred to the office. She had never heard anything about Schuman being entitled to share the fee. She also said that while she was employed by me there were numerous occasions wherein office work was delayed by Schuman, and that great problems were caused because she did not do her work timely to meet court deadlines. She stated that such problems with Schuman existed at various times through her association with my office.

TESTIMONY OF MAUREEN BRYAN (Excerpts only)

She also recalled the incident when Schuman took the two files from her desk which made her upset because she knew I would be

mad. She also recalled a controversy in the office as to whether or not Mr. Himmelman had made an adverse remark about me, but she could not recall who it was who was supposed to have relayed the remark to us.

SCHUMAN TESTIMONY (Excerpts only)

When asked why she had placed my name on the Staska "Contract for Legal Services" during Cross-Examination at the Arbitration hearing, Schuman answered: "Because I wanted her to know who I was sharing fees with". When I asked her about the initials "JS" appearing on the document, thinking they were her initials, she said "No, I didn't sign it, those are Jean Staska's initials". She also said that she did not pay the \$91.00 rent owed to me on the first of April, 1981 because she did not have the money.

(THE FOREGOING DECLARATION WAS VERIFIED AND WHEN FILED HAD APPENDED TO IT EACH OF THE EXHIBITS DESCRIBED. THESE EXHIBITS ARE NOT APPENDED HEREIN FOR BREVITY. NO DECLARATION WAS FILED BY SCHUMAN, NOR WERE THE WITHIN RECITALS OTHERWISE CONTRA-DICTED BY HER)

OAKLAND-PIEDMONT MUNICIPAL COURT  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

Patricia M. Bourke	)	
	)	
Plaintiff,	)	No. 389281
	)	
vs-	)	
	)	TRANSCRIPT OF
Jeanne Schuman, et al	)	ORAL PROCEEDINGS
	)	BEFORE HON.
Defendants.	)	RODERICK DUNCAN
	)	MOTION TO VACATE
	)	ARBITRATION
	)	AWARD
Related Cross-Action	)	11/7/85
	)	

RAISING THE CONSTITUTIONAL ISSUE: (Excerpt  
only...page 6 of transcript lines 18-24):

MR BROWER: "The law is clear, that a complaint  
for defamation must state the words -- the  
defamatory words -- as a matter of  
constitutional due process and that absent  
that, those words are not raised. They're not  
an issue. And in addition, it was the Social  
Security letters, as well, that are mentioned  
in the memorandum as well as letters to  
congressman, so --"

(p. 20 lines 19-24):

"The issue here, I think is very clear from  
that memorandum -- that it was based on  
nonpleaded documents and as a right of

constitutional due process of law and all--  
everything we know about arbitration, how you  
should not exceed the scope but this one did  
and that makes the judgments thats based on it  
void."



Law Offices  
William D. Gibbs  
1955 Mountain Blvd.  
Oakland, California 94611  
(415) 339-3334

FILED 9/4/87

Attorney for Defendant and  
Respondent JEANNE SCHUMAN

SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, COUNTY OF ALAMEDA

PATRICIA M. BOURKE,	)	
	)	
Plaintiff and Appellant	)	No. 1460
	)	
vs-	)	
	)	
	)	ORDER TO SHOW
JEANNE SCHUMAN, et al	)	CAUSE RE
	)	CONTEMPT
Defendant and Respondent	)	(C.C.P. 1209)
	)	

---

To PATRICIA M. BOURKE, Plaintiff and  
Appellant, herein:

YOU ARE HEREBY ORDERED to appear on  
Friday October 9, 1987, at 9:00 a.m or as  
soon thereafter as the matter may be heard,  
in the courtroom of Appellate Division of the  
above-entitled court, located at 12th and  
Fallon Streets, Oakland, California, then and  
there to show cause, if any you have, why you

should not be judged in contempt of court and punished accordingly for willfully disobeying the order of this court made on February 20, 1987, in the above entitled action.

The order of February 20, 1987, and your disobedience thereto are particularly described in the declaration of William D. Gibbs, which is attached hereto and made a part thereof.

It is further ordered that service by mail of a copy of this Order to Show Cause and the declaration of William D. Gibbs, Esq. on PATRICIA M. BOURKE, Esq., an attorney in pro pria personal herein, shall constitute sufficient service without personal service on the alleged contemner.

Dated: 9/4/87

s/Winton McKibben  
Judge of the Superior Court

FILED 10/7/87

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State of California, did, by reason of the acts hereinafter described, deprive Plaintiff of the right of due process and equal protection secured by the United States Constitution.

2. All named Defendants reside in the Judicial District of the Northern California, moreover, each act and event leading to the within claims occurred in said District. Venue is therefore proper pursuant to the terms of 28 U.S.C. 1391.

3. Plaintiff has exhausted her State Remedies in that she has filed timely appeal/petitions with the Appellate Division of the Alameda County Superior Court, California District Court of Appeal, a California Supreme Court, and with the United States Supreme Court. Each said filing resulted in a "denial" from each court without opinion.

4. Defendants, and each of them, while acting under the color of laws of the State of California have deprived Plaintiff of due process of laws secured by the Fourteenth

Amendment of the United States Constitution through the following acts and events:

A. Plaintiff, an attorney licensed by the State of California filed a complaint against her former associate, Defendant, JEANNE SCHUMAN, also a licensed attorney, for conversion and for interference with advantageous relations. Defendant SCHUMAN filed an Amended Cross-Complaint against Plaintiff for defamation and the intentional infliction of emotional distress. The issues presented in said Complaint and Amended Cross-Complaint were then submitted, pursuant to stipulation to binding Judicial Arbitration, and John True, III, Esq. was duly appointed by the Alameda County Court System to hear and determine the said issues.

B. Defendant SCHUMAN'S Amended Cross-Complaint pleaded and specifically referred and appended EIGHT LETTERS of the Plaintiff which she alleged defamed her. Neither Schuman, nor any of her counsels, at any time sought or offered to amend the Amended Cross-Complaint, nor did they offer any further

allegedly defamatory material into evidence so as to try to expand the issues before said Arbitrator. Consequently, only the issues raised against Plaintiff or of which she had notice were those framed by the Amended Cross-Complaint.

C. However, in rendering his lengthy written Decision, the said Arbitrator abused his discretion and committed repeated gross judicial errors. In justifying his large award against Plaintiff under said Amended Cross-Complaint, the Arbitrator made express reference in his written decision to a total of "15 letters", and also specifically described wholly unpleaded letters (e.g. to the State Bar and to Social Security). Consequently, the face of the Arbitration Award against Plaintiff on its face showed that wholly unpleaded causes of action had been relied upon to exacerbate the damages awarded to SCHUMAN against Plaintiff, BOURKE. The Arbitrator made no allocation of damages among the said letters.

D. The decision of said Arbitrator was thereupon converted into a formal judgment against Plaintiff, Patricia Bourke by the Alameda County Municipal Court (Oakland-Piedmont-Emeryville Judicial District), and became a duly entered judgment for \$4,500.00 in compensatory damages, and \$10,000.00 in punitive damages against her personally.

E. Defendants, and each of them, thereupon opposed every attempt made by Plaintiff to have the said judgment vacated, and deliberately misled the courts as to the facts and law at every opportunity, with the result that the Courts of the State of California have refused to vacate said judgment. Meanwhile, Defendants, and each of them, have instituted collection proceedings against Plaintiff, and have filed liens against her under the color of law of the State of California.

5. In thereby rendering a decision which greatly exceeded the scope of the issues before him, the Arbitration Award and the judgment based upon said award are both void.

on their face. The within controversy therefore is one within the jurisdiction of the United States District Court pursuant to the provisions of 42 U.S.C. 1983 inasmuch as said judgment was predicated upon a lack of subject matter jurisdiction and purported to deprive Plaintiff of her property without the notice and hearing guaranteed by the Fourteenth Amendment of the United States Constitution.

6. Plaintiff therefore asks Declaratory Relief pursuant to the provisions of 28 U.S.C. 400 declaring said Judgment void by reason of a lack of subject matter jurisdiction. Plaintiff also asks for a stay of all collection proceedings pending the hearing of the within matter.

AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION, PLAINTIFF ALLEGES AS FOLLOWS:

7. Plaintiff incorporates by reference paragraphs 1-6 of her First Cause of Action.

8. The said Arbitration Award was not only void on its face by reason of a lack of subject matter jurisdiction, but was on its



face predicated upon legal reasoning so insane and capricious as to amount to a mere sham. Said decision on its face contained repetitive, gross legal errors which resulted in arbitrary conclusions so diametrically opposed to elementary legal principles as to reverse liability between the parties and to thereby violate Plaintiffs rights to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution. The face of said decision contained the following gross legal errors:

A. Although it was undisputed that SCHUMAN procured the clients in issue to sign a Contract for Legal Services which named Plaintiff as the "attorney", the Arbitrator expressly concluded that Plaintiff had "no connection to the case", "no attorney/client relationship", and "no contractual relationship" with that same case/client! Said Arbitrator thereupon, and on that basis, concluded that Plaintiff's statements to the contrary in her letters were untrue and hence defamatory to SCHUMAN.

B. Secondly, the reasoning contained on the face of the Arbitration Award either utterly disregarded or turned around backward the entire law of agency. The said Arbitrator expressly found that Defendant SCHUMAN had been an employee of Plaintiff when she performed the legal services in issue, and that SCHUMAN was moreover entitled to a "referral fee" for having referred the said client/case to Plaintiff. However, and in spite of said findings, the Arbitrator thereupon concluded that because Plaintiff had never met the client or done the legal work, she could not have any "attorney/client relationship"! This conclusion was likewise pivotal in finding Plaintiff liable to SCHUMAN under her Amended Cross-Complaint.

9. In thusly reversing liability, the Arbitrator did not commit "mere error", but rather rendered a judgment against Plaintiff by a decision which on its face offended reason, common sense, and was diametrically opposed to whole bodies of elementary law.

10. The combined result of the Arbitrator's insane reasoning was such as to turn Plaintiff's truthful statements regarding SCHUMAN into lies. Hence, in having assessed large compensatory and punitive damages against Plaintiff for her truthful statements, said judgment violated Plaintiff's rights of Free Speech under the First Amendment of the United States Constitution.

11. In assessing both compensatory and punitive damages for Plaintiff's letters which were each clearly within well-established privileges under California Law (C.C. 47, being communications to interested persons, and communications involving proposed litigation) said decision arbitrarily deprived Plaintiff of the benefits and immunities arising from privileges on which she had a right to rely. For this additional reason, Plaintiff has been subjected to liability contrary to due process of law.

12. Consequently, and for each of the above reasons, Plaintiff asks for a Declaratory Judgment vacating the aforesaid judgment against her.

AS AND FOR A THIRD CAUSE OF ACTION, PLAINTIFF ALLEGES AS FOLLOWS:

13. Plaintiff incorporates by reference paragraphs 1-5 of the First Cause of Action and paragraphs 8-12 of the Second Cause of Action, and paragraphs 29 and 30 of the Sixth Cause of Action.

14. By reason of the within described facts and circumstances, Plaintiff seeks a recovery of damages pursuant to the provisions of 28 U.S.C. 1343.

15. At all times mentioned Defendants JEANNE SCHUMAN, WILLIAM GIBBS, Esq., and DAVID HIMMELMAN, Esq. were attorneys of record in the Municipal Court action, and each therefore either participated directly in the activities under color of law as herein described, or alternatively were in a position to have prevented the acts and events causing damage to Plaintiff and which

deprived her of her constitutional rights as herein alleged.

16. Apart from being an attorney of record, Defendant, JEANNE SCHUMAN, was herself the Cross-Complainant and client of Defendants WILLIAM GIBBS, Esq. and DAVID HIMMELMAN, Esq., and as such, had full power and authority to have permitted the said Municipal Court Judgment against Plaintiff to have been vacated.

17. Apart from being an attorney of record, Defendant, DAVID HIMMELMAN, Esq. was the employer of JEANNE SCHUMAN during the period when Plaintiff's attempts to have the aforesaid Municipal Court judgment vacated were each opposed, and continued to be her employer during all or part of the collection activities herein alleged. Therefore, DAVID HIMMELMAN, Esq. was in a position to have prevented Plaintiff from being deprived of her constitutional rights, but repeatedly failed and refused to do so.

18. Defendant SCHUMAN and her counsels WILLIAM GIBBS, Esq. and DAVID HIMMELMAN, Esq.

have each acted fraudulently and in bad faith from the outset, in that each knew, or had reason to know that the communications complained of in said Amended Cross-Complaint they had caused to be filed were both true and protected by privilege. Moreover, Defendants, and each of them, as licensed, practicing attorneys were fully aware that the said Municipal Court judgment was void by reason of the lack of subject matter jurisdiction, and further by reason of the fact that the said judgment was the product of utterly insane reasoning and multiple gross errors of law evident right on the face of the Arbitrator's Decision as aforesaid.

19. Plaintiff therefore asks compensatory damages as follows:

A. By reason of the acts of Defendants, and each of them, in opposing the vacation of the said void judgment, Plaintiff has suffered great and extreme mental distress and physical torment commencing upon receipt of the Arbitrator's Decision in June, 1985 when she had to undertake to try to have said

judgment vacated by performing hundreds of hours of uncompensated, futile legal services while acting in pro per. Said extreme mental distress was then magnified further when she then had to suffer the humiliation, and shame involved in Defendants' collection proceedings which became known to her neighbors, family friends and associates. As a result of the foregoing, Plaintiff asks damages against Defendants, and each of them, in the amount of \$350,000 pursuant to the provisions of 28 U.S.C. 1342.

B. In undertaking to vacate said judgment against her, Plaintiff has sustained substantial out-of-pocket expenses, for which she seeks reimbursement.

C. As a direct and proximate result of the misconduct of the Defendants, and each of them, Plaintiff has paid and continues to pay and incur expenses for medications and psychological treatment in an amount to be proved at trial.

20. Said Defendants, and each of them, in doing and omitting to do the acts as

should not be assessed sanctions for having filed a "frivolous appeal".

29. Plaintiff filed opposition to said Order to Show Cause and repeated each of the grounds for her appeal as aforesaid. Defendants, appeared and asserted a right to sanctions by reason of "frivolous appeal".

30. On February 19, 1987 the Appellate Division of the Alameda County assessed Plaintiff the sum of \$2,500 pursuant to the request of Defendant, WILLIAM GIBBS, Esq. In so doing, the Appellate Division of the Alameda County Superior Court issued a written opinion which adopted and reiterated the vituperative language of the Arbitrator against Plaintiff, stated that she had offered "no evidence" of the truth of her statements, and had pointed to "no error" in the record. The decision also made reference to the fact that Plaintiff had sought recourse in higher courts. The said decision made no reference to and utterly ignored the fact that the judgement was void on its face for lack of subject matter jurisdiction as



aforesaid.

31. Plaintiff filed a timely Petition for Certiorari with the District Court of Appeal relative to said assessment of sanctions for "frivolous appeal", which said Petition was "denied" without opinion.

32. Said decision of the Appellate Division of the Alameda County Superior Court was so arbitrary as to offend reason. The appeal of a void judgment can hardly be "frivolous". Moreover, the decision blatantly misrepresented the record before the court and thereby deprived sought to deprive Plaintiff of her property contrary to due process of law.

33. Plaintiff therefore asks that the said award of sanctions be vacated pursuant to the provisions of Federal Rules of Civil Procedure 60(b)(6).

WHEREFORE, Plaintiff prays for Judgment in the First Cause of Action as follows:

1. For injunctive relief staying the enforcement of said judgment pending the hearing of the within action.

2. For Declaratory Relief nullifying the

Judgment against Plaintiff.

3. For costs of suit,

4. For such other and further relief as to the court may seem proper.

WHEREFORE, Plaintiff prays for Judgment in the Second Cause of Action as follows:

1. For injunctive relief staying the enforcement of said judgment pending the hearing of the within action.

2. For Declaratory Relief nullifying the judgment against Plaintiff.

3. For costs of suit,

4. For such other and further relief as to the court may seem proper.

WHEREFORE, Plaintiff prays for Judgment in the Third Cause of Action as follows:

1. For damages for mental suffering in the amount of \$350,000.00 against Defendants, and each of them.

2. For incidental damages according to proof;

3. For medical and related expense according to proof;

4. For punitive damages in the amount of

\$300,000.00;

5. For reasonable attorney fees.
6. For all costs of suit;
7. For such other and further relief as to the court may seem proper.

WHEREFORE, Plaintiff prays for Judgment in the Fourth Cause of Action as follows:

1. For damages for mental suffering in the amount of \$350,000.00 against Defendants, and each of them.

2. For incidental damages according to proof;

3. For medical and related expense according to proof;

4. For punitive damages in the amount of \$300,000.00;

5. For reasonable attorney fees.
6. For all costs of suit;
7. For such other and further relief as to the court may seem proper.

WHEREFORE, Plaintiff prays for Judgment in the Fifth Cause of Action as follows:

1. For damages for mental suffering in the amount of \$350,000.00 against Defendants, and each of them.

2. For incidental damages according to proof;

3. For medical and related expense according to proof;

4. For punitive damages in the amount of \$300,000.00;

5. For reasonable attorney fees.

6. For all costs of suit;

7. For such other and further relief as to the court may seem proper.

WHEREFORE, Plaintiff prays for Judgment in the Sixth Cause of Action as follows:

1. That the award of sanctions against Plaintiff for "frivolous appeal" be vacated.

2. For all costs of suit;

3. For such other and further relief as to the court may seem proper.

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Patricia M. Bourke

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

Date: 1/11/88 Winton McKibben, J.  
Deputy Clerk Catherine Ferber  
Dept. 16

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Patricia M. Bourke

v-

Jeanne Schuman, William Gibbs  
and David Himmelman

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Nature of Proceedings: Order to Show Cause  
Re Contempt Appellate Action No. 1460

The above entitled action comes on calendar this day having been continued from October 9, 1987 for appearance of plaintiff. There being no appearance by Patricia Bourke as previously ordered, the Court now orders a bench warrant to issue for defaulting plaintiff, Patricia M. Bourke. Bail is set at \$50,000.00 cash only. Plaintiff's request for continuance received by the court on Jan. 8, 1988 is DENIED.

Respective counsel are hereby notified by a copy of this minute order mailed to the

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addresses below:

Gregory Stout  
Attorney at Law  
220 Montgomery Street,  
Suite 1010  
San Francisco, Ca 94104

William Gibbs  
Attorney at Law  
1955 Mountain Blvd.  
Oakland, Ca. 94611

By: Catherine Ferber  
Deputy County Clerk

GREGORY STOUT, ESQ.  
Attorney at Law  
220 Montgomery Street  
Suite 1010  
San Francisco, California 94104  
Ph: (415) 398-6283

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA M. BOURKE,	)	
	)	
Plaintiff,	)	No. C 87 5134 JPV
	)	
vs-	)	DECLARATION IN SUPPORT
	)	OF MERITS OF MOTION
	)	FOR INJUNCTIVE RELIEF
JEANNE SCHUMAN,	)	
WILLIAM GIBBS,	)	
DAVID HIMMELMAN,	)	
	)	
Defendants.	)	
	)	

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INTRODUCTION:

Plaintiff (hereinafter "Declarant") through this suit challenges the constitutionality of a certain Oakland-Piedmont Municipal Court judgment against her which was rendered pursuant to a binding judicial arbitration (Appendix "A"). Plaintiff alleges that this final state court judgment was predicated upon a proceeding which violated her right to

notice and hearing and which was otherwise contrary to due process of law under the Fourteenth Amendment of the United States Constitution.

The subject judgment presently exceeds \$20,000.00 (\$10,000 of which was for "punitive damages") was rendered pursuant to an Amended Cross-Complaint (Appendix "B") filed by Declarant's former associate (hereinafter called "Schuman") for alleged "defamation" and "intentional infliction of emotional distress" which allegedly arose from **EIGHT LETTERS** written by Declarant to persons directly involved in a dispute with Schuman. Each of these eight letters complained of was appended to Schuman's Amended Cross-Complaint (Appendix "B").

In appendix "A" is the eleven page decision written by the Arbitrator explaining his decision and summarizing the evidence he had relied upon in giving the award against Declarant. Upon receipt of this decision, a Declaration was thereupon prepared to accompany Declarant's Motion to Vacate filed



in the Municipal Court. (Appendix "D") Which Declaration set forth the evidence adduced in the Arbitration Hearing. Since Schuman filed no contrary Declaration, this document per Hirsch v. Ensign (1981) 122 CA 3d 389, 188 Cal Rptr 155, forms the official record of what occurred at the arbitration.

THE JUDGMENT ON ITS FACE VIOLATED THE FOURTEENTH AMENDMENT RIGHT TO NOTICE AND HEARING.

As will be established by the within Points and Authorities, the subject judgment is VOID ON ITS FACE because the court record establishes that the judgment palpably exceeded the scope of the pleadings. The Amended Cross-Complaint submitted for arbitration described and appended EIGHT LETTERS, whereas the Arbitration Award was expressly predicated upon a total of FIFTEEN LETTERS (Appendix "A" p. 5 line 10), written by Declarant in connection with Plaintiff's dispute with Schuman. Not only did the Arbitrator describe the letters he predicated his judgment upon by their number, but he

also described SEVEN WHOLLY UNPLEADED AND UNLITIGATED LETTERS" by their addressee and content as well. (See and compare Appendix "A" p. 4-6, 9-10, with Appendix "B" p. 9-16, pertinent lines being highlighted in yellow, see also the actual letters appended to "B")

Schuman at no time prior to the arbitration hearing nor at the hearing made any offer to further amend her Cross-Complaint so as to include these unpleaded letters. Likewise, at no time during the hearing did she move to have these letters included as evidence under her Amended Cross-  
\*1  
Complaint. Consequently, Declarant had no notice that the scope of the accusations against her had been materially expanded, nor was there any opportunity to object.  
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\*1 These additional seven unpleaded letters were admitted into evidence by Declarant under her own complaint only to demonstrate the time and effort expended in search of money and files which Schuman had converted. These letters were all written, at least, two years before the hearing and hence the one year statute of limitations (C.C.P. 340(3)) had long since run on them. Schuman had made no attempt to determine if further letters were written in that she conducted no discovery. (Appendix "D" p. 6 lines 24-28, p. 7 lines 1-9)

Declarant learned for the first time that these additional letters/causes of action were being used against her when received the decision. (Appendix "D" p. 6, lines 6-28, p. 7 lines 1-22).

THE ARBITRATOR'S AWARD ON ITS FACE ABROGATED ESTABLISHED, ELEMENTARY LEGAL PRINCIPLES AND DISREGARDED THE IMPORT OF UNREFUTED DOCUMENTARY EVIDENCE WITH THE RESULT THAT MINIMAL DUE PROCESS WAS DENIED.

There is no significant issue regarding any of the facts found by the arbitrator. His findings are essentially identical to Declarant's factual contentions. The Arbitrator was simply ignorant of the legal effect of the facts found.

**FACTS:**

It was undisputed that Schuman was at all pertinent times an employee of Declarant. It was further undisputed that she undertook the representation of the two Social Security claimants in question with the permission of Declarant, and that she procured each said client to execute a written retainer agreement which named declarant as their sole attorney. (Appendix "C", Appendix "A" p. 1

lines 1-15, p. 2 lines 1-9, 19-22, footnote 1, p. 3 line 1, Appendix "D" p. 2 lines 12-22, p. 12 lines 1-10) It was also undisputed that Schuman was paid by Declarant for servicing both these clients, and Declarant also paid all overhead and client expenses (Appendix "D" p. 2 lines 23-24, p. 3 lines 1-13, Appendix "A" p. 4 line 20). At the conclusion of the legal services, Schuman prepared and submitted a Petition for Attorney Fees to Social Security whereon she designated herself as having acted as Declarant's associate. (Appendix "D" p. 3 lines 13-20). Both this document as well as the Retainer Agreement were admitted into evidence at the arbitration hearing. In her Cross-Complaint Schuman sought a "standard referral fee" for these two Social Security cases. (Appendix "B" p. 3 lines 1-3, 25-26, p. 4 lines 5-7, p. 5 lines 4-7). She also sought and was awarded a "referral fee" for these cases by the arbitrator. (Appendix "A" p. 2 lines 8-9, p. 7 lines 14-16, p. 11 line 911). Schuman's only further allegation was

that she "never intended" to refer the clients, but was "only referring the fee"! She did, however admit on crossexamination that she had not explained this not explained this odd intention at the time of the referral. (Appendix "D" p. 8 lines 9-21) Months later, after the services on both Social Security cases were completed under the aforesaid arrangement, a dispute arose about an unrelated matter. Schuman claimed she could not afford to pay certain rent owed to Declarant (Appendix "A" p. 11 line 2-4, Appendix "D" p. 3 lines 20-26) and for the first time asserted a right to a credit for a "referral fee" on the Social Security cases. (Appendix "A" lines 9-14) When Declarant refused and terminated Schuman, Schuman threatened that if she could not have her way, she would take the as yet unpaid Social Security fees. (Appendix "D" p. 3 lines 20-25), Appendix "D" p. 3 lines 20-25). That same day, Schuman acted to implement her threat by seizing and refusing to return both

case files. Although the police were called to assist, they refused to intervene. (Appendix "D" p. 3 lines 27-28, Appendix "A" p. 4 lines 1-9) Shortly thereafter, she contacted both clients and procured each of them to execute a statement which stated that she, and not Declarant, was the one entitled to the Social Security fees and the files. (Appendix "D" p. 4 lines 1-11). These documents were then sent by Schuman to Social Security to induce them to divert both fees to her. These statements were also placed in evidence at the arbitration. In spite of Declarant's letters informing Social Security that Schuman's claim was false, Social Security sent both fees to Schuman. (Appendix "A" p. 2, lines 10-18, p. 4 lines 15-21, Appendix "D" p. 10 lines 19-28, p. 11 lines 1-6)(i.e. the same unpleaded letters on which the Arbitrator relied for his damage award against Declarant). (Appendix "A" p. 5 line 10, 15-16, p. 10 line 18) The first check was placed into Schuman's personal account and used by her for an undetermined

amount of time, as shown by the fact that when she later tendered a personal check to Declarant for part of the first fee, but her check bounced when Declarant initially attempted to negotiate it (Appendix "D" p. 5 lines 1-7). Schuman thereafter wrote to Declarant threatening her with State Bar action if she made further contact with "her clients", and informing Declarant that she intended to treat the next check in the same way. (Appendix "D" p. 5 lines 8-13). Since Schuman had stolen both case files, and the clients refused to cooperate in any way, Declarant had no knowledge as to the fee amounts or when or whether Schuman had received them. All the offending letters had been written before she tendered the amount she claimed was the second fee by a check bearing a restrictive endorsement. (Appendix "D" p. 5 lines 8-13)

#### THE LETTERS

Every letter on which the Arbitrator predicated his large award of damages was

written only to parties and entities directly involved in the controversy (clients, State Bar, Social Security), and all of the language used dealt only with the dispute. (See actual letters at end of Appendix "B") The purpose of each letter was to enlist the cooperation of the clients, inform the addressees of Declarant's claims to the fees and the files, to attempt to gain access to the documents stolen, and to use the information gotten in the suit which Declarant planned to file and did file against Schuman. Declarant wrote each letter in the good faith belief that Schuman owed her a fiduciary duty, had utterly no right to make threats, had misrepresented matters to the clients, and had then misappropriated funds belonging to Declarant. As the sole attorney named in the retainer agreement (Appendix "C"), and with no substitution of attorneys being involved, Declarant believed that as against her former associate she had the exclusive right to the fees and files. Consequently, under elementary principles of



agency law, (See Appendix "E" p. 7 lines 8-28, p. 9 lines 1-21). Declarant believed each statement she made accusing Schuman of attempting to steal and of lying (worst words used) was true. Moreover, each letter written was ABSOLUTELY PRIVILEGED for one, if not two separate reasons. (see C.C.P. 47, 2 (3), (4), and 3, Appendix "E" p. 9-12) in that each was written to prepare for litigation or was written to a public body about matters within its purview. (See Memo re Arbitrator's insane conclusions re these facts found).

**THE MUNICIPAL COURT DENIED MY MOTION TO  
VACATE WITHOUT CAREFUL ANALYSIS OR  
RECOGNITION OF ANY OF THE ISSUES**

Although Declarant was represented by counsel at the hearing in Municipal Court, she was present at the oral argument. Declarant had prepared an extensive brief pointing out all the gross errors of the Arbitrator (a shortened version of which was filed for the appeal to Superior Court, Appendix "E"), the standards for vacating otherwise binding awards, and the fact that

the Arbitrator's Award had far exceeded the scope of the pleadings. (See Appeal Brief, Appendix "E" p. 12-13) It was also pointed out during the oral argument that the Declarant's constitutional rights to notice and hearing had been violated by this fact. While Judge Duncan claimed to have read the pleadings, he was wholly non-committal at the time of the hearing and appeared to not be familiar with any of the facts/issues. On the conclusion of the oral argument Judge Duncan "denied" my motion to vacate in open court. I then filed for "rehearing" and argued the matter myself, this time vehemently bringing the gross error of agency law to his attention as well as the variance issue and the resulting denial of due process. I also repeated that these grounds more than met the standard applicable to vacate binding arbitrations. (Appendix "E" p.13-15) My adversary simply argued that since I had no "new facts", I was entitled to no rehearing. Judge Duncan now appeared to understand the error of the Arbitrator, but said "...it

might have been different if..." and then again "denied" the rehearing in open court at the conclusion of argument.

THE HEARING BEFORE THE APPELLATE DIVISION OF THE ALAMEDA COUNTY SUPERIOR COURT WAS WHOLLY DEFERENTIAL AND PERFUNCTORY WITH THE JUDGES DEMONSTRATING NO UNDERSTANDING OF THE ISSUES.

Again Declarant retained counsel to represent her, but she also attended the hearing. As her attorney began to speak about the derivative nature of the agency relationship, the judges appeared baffled about what he was talking about. Judge Travis was initially able to contribute only some generality about the burden of proof on an appeal. He also had some vague idea that a defamation action was involved and that the arbitrator had castigated Declarant. It appeared from his remarks that all he had read was Schuman's Responsive Brief and parts of her Cross-Complaint. He also said, "Well, she was nasty wasn't she?". On hearing my counsels argument about due process and the decision relating to unpleaded letters, Judge Eaton said: "Well, how could they (Schuman)

be expected to plead letters when they did not know about them?" (Schuman had conducted no discovery.) Judge McKibben's only contribution was to say: "Let's get this over with!".

During the orals Declarant's counsel appeared somewhat overwhelmed by the bias confronting him. It was obviously futile no matter what he said. The panel took the matter under submission and then issued a decision, not only affirming the arbitration, but they also Declarant to show cause why she should not be cited for having filed a "frivolous appeal"!!! Interestingly, they also cited the attorney in the case calendared immediately prior to Declarant's for "frivolous appeal".

**THE HEARING ON FRIVOLOUS APPEAL DEMONSTRATED THE INDEFENSIBILITY OF WHAT THE APPELLATE PANEL HAD DONE**

Declarant personally appeared to argue the sanctions. She began by inquiring whether they had affirmed because they had concluded that "gross error" was insufficient to vacate an otherwise binding arbitration. Judge

Travis appeared quite taken aback by Declarant's less-than-contrite approach, as well as by the question. He looked from side to side for help from his colleagues, upon getting no help, he then recovered and said: "Don't you be questioning us, you tell us why you should not be cited for sanctions"! The insane conclusion of the arbitrator about how an employer attorney could have no rights unless she actually met the clients and did the work was read directly out of the Arbitration Award, and Declarant asked: "Surely, you all do know better than that?" The panel was also informed that their ruling in favor of this reasoning would "come as a big surprise to Pillsbury, Madison and Sutro", and that accordingly, we "must have some sort of revolutionary new law in Alameda County"! Declarant then demonstrated how this pivotal finding had reversed liability and made Declarant liable to pay large damages to someone who had converted money and lied to clients. It was also brought to the attention of the panel that Declarant was

the sole attorney named in the retainer agreements, which fact ought to have been conclusive of whom had the rights, and that Declarant was therefore entitled to write truthful letters to protect those rights.

Judge Travis then interrupted saying: "We can't do anything about that now, why don't you tell us about sanctions"! Declarant pointed out that the whole issue as to sanctions was whether the appeal were meritorious and that the argument directly addressed the merits. He grudgingly let her continue. Judge Travis thereafter made this same remark three more times during the oral arguments and was met by the same response. The three judges on the panel became uncomfortable, agitated, and acted embarrassed. At one point, Judge Eaton said: "Now, you know that you did say nasty things in those letters!"

Finally, Judge Travis turned to the adversary, William Gibbs, who claimed Declarant was a vexacious litigation who had caused all this trouble over only \$90.00 in

rent and that therefore she should pay, at least, \$2,500.00 in sanctions. The matter was taken under submission.

THEREAFTER, DECLARANT FILED MOTIONS FOR REHEARING AND PETITIONS WITH THE DISTRICT COURT OF APPEAL, THE CALIFORNIA SUPREME COURT, AND THE UNITED STATES SUPREME COURT, AND WAS "DENIED" BY EACH.

Following the hearing affirmation of the judgement by the Appellate Division, Declarant petitioned both for rehearing and for certification to the District Court of Appeal. Each of which was "denied" prior to the hearing on sanctions. Declarant thereupon filed a Petition for Writ of Certiorari with the District Court of Appeal which was "denied" one day after it was sent to the judges of the Fifth Division of the First Appellate District. Declarant also Petitioned the California Supreme Court for Hearing and the United States Supreme Court for Certiorari and was, in turn, denied without opinion or comment. Following the receipt of the denial by the California Supreme Court, Declarant received the decision awarding sanctions of \$2,500.00.

Declarant thereupon petitioned the Appellate Division for Reconsideration and was "denied". Declarant thereupon again petitioned the District Court of Appeal relative to the award of sanctions, and was again "denied" by the Fifth Division of the First Appellate District. At each juncture, beginning with the Motion to Vacate in Municipal Court, Declarant informed each court of the fact that the judgment exceeded the scope of the pleadings and hence was void in that the same violated her Fourteenth Amendment due process rights to notice and hearing. Likewise, all the egregious errors of agency, contract, and defamation law were discussed and documented with many pertinent cases cited. (see Appendix "E")(see Appendix "F" for decisions) Declarant is informed and believe that Judge Duncan as well as the other Alameda County Judges had an overriding well-publicized objective of catching up with the backlog of cases. Hence, the determination to rid themselves of such disputes, and to discourage appeals by



refusing to reverse, apparently heedless of the rights of the litigants. This conclusion is based upon what I heard and observed during the oral arguments, what I have read in news reports made at around the time in question, and what is common knowledge among local attorneys.

Moreover, Declarant is informed and believes that the Fifth Division of the First Appellate District has a policy not to exercise their discretionary review of any civil matters from Municipal Court in that they consider them insufficiently important to warrant their time. The California Supreme Court, on the other hand had just lost three justices and was in transition when the said petition was filed.

#### VERIFICATION

I, the undersigned declare under penalty of perjury that the foregoing is true and correct. Executed on January 12, 1988 at San Francisco, California.

Patricia M. Bourke

(Proof of Service Omitted)

Law Offices  
William D. Gibbs  
169 14th Street  
Oakland, Ca. 94604-1917

Attorney In Pro-Per and  
Attorney for Defendants:  
JEANNE SCHUMAN, DAVID HIMMELMAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA M. BOURKE,	)	
	)	
Plaintiff,	)	No.C87-5134 JPV
	)	
vs-	)	
	)	
	)	DECLARATION IN
JEANNE SCHUMAN, WILLIAM	)	SUPPORT OF MOTION
	)	TO STRIKE AND OR
GIBBS, DAVID HIMMELMAN,	)	DISMISS AND FOR
DOES I-X,	)	SANCTIONS AND
	)	FOR AN INJUNCTION
Defendants.	)	
	)	

I, WILLIAM D. GIBBS, declare that I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am the attorney of record for the named defendants in this action, and make this declaration in support of the above entitled Motion.

## STATEMENT OF FACTS

The genesis of this complaint for Declaratory Relief and Damages lies in a law suit (sic) that Plaintiff BOURKE, filed against Defendant, JEANNE SCHUMAN, and two social security recipients on May 27, 1982. JEANNE SCHUMAN was an attorney that worked for and with BOURKE at one time and had various financial arrangements during that time. The social security recipients were clients that had been referred to Ms. SCHUMAN, while she was working with plaintiff. The attorneys worked out a referral arrangement as far as the fees were concerned. The matters related to social security problems of the two individuals. Subsequently Ms. SCHUMAN left the BOURKE law offices, as the result of a dispute, and took the two social security cases with her. She received the fees after resolving successfully the matters for both clients. She held the fees and attempted to resolve the fee dispute that arose, without success. The fees totaled \$1,879.45. Ms.

Schuman paid the plaintiff \$946.32 on one case and tendered \$653.00 on the other, asking only that she be paid the agreed upon referral fees. The plaintiff rejected the tender of \$653.00 and filed this lawsuit on May 27 1982. When SCHUMAN wouldn't give her all the fees, she sued for them (conversion) and for the loss of the two clients (interference with economic advantage). The difference between what was tendered and what was claimed was \$305.13. Ms. SCHUMAN cross-complained for defamation and breach of contract. The matter was put at issue and discovery completed. A brief chronology of the lawsuit follows:

1. A stipulation was entered into by the parties to have "binding arbitration" in open court on November 5, 1984.

- 2). The "binding arbitration" was held on June 11, 1985, and the Award signed on June 21, 1985. A copy of the Award is attached hereto as Exhibit "B". The cross-complainant, SCHUMAN, was awarded \$14,271.86

against the cross-defendant, and Judgment was entered on July 30, 1985.

3). Plaintiff filed her first Petition to Vacate Award, in the Alameda County Superior Court, on July 23, 1985. Defendant SCHUMAN filed her brief in opposition and to have the matter transferred to the Oakland-Piedmont-Emeryville Municipal Court where it began and properly belonged. The Alameda Superior Court denied the Motion to Vacate and ordered the matter transferred back to Oakland Municipal Court on August 15, 1985.

4. Plaintiff filed a Motion to Vacate Award in the Oakland Municipal Court on October 3, 1985. The matter was again briefed and argued. The petition was denied Nov. 7, 1985.

5. The plaintiff filed a Motion to Reconsider the denial of her previous motion. That was also briefed, argued and denied on December 6, 1985.

6. Plaintiff next filed a Notice of Appeal to the Appellate Division of the Alameda

County Superior Court on December 6, 1985. The appeal was briefed, argued, and denied 3-0 on August 22, 1986.

7. Plaintiff then filed a Petition for Rehearing and for Certification to the District Court of Appeals. That matter was briefed and denied 3-0, without hearing, on September 25, 1986.

8. The Appellate Division, on its own motion, invited plaintiff and real party in interest to brief the question of whether or not the Court should impose sanctions on plaintiff per California Code of Civil Procedure Sec. 907. That matter was briefed and argued on November 21, 1986, and \$2,500.00 sanctions were imposed on Plaintiff BOURKE, which have not been paid.

9. Plaintiff's Petition to the California District Court of Appeals was denied without comment on September 29, 1986.

10. The Petition for Review to the California Supreme Court was denied, without comment, on December 17, 1986.

11. The Petition for a Writ of Certiorari to the United States Supreme Court was denied, without comment, on June 1, 1987. This suit is the ninth attempt by plaintiff to overturn the arbitration award! She has failed to convince eight different courts and 28 judges (Justice Broussard did not vote on the Petition for Review before the California Supreme Court), of the merits of her cause. The entire complaint reads like a bad novel and, when boiled down to its basics, is merely a re-hash of the Oakland-Piedmont-Emeryville Municipal and Alameda County Superior Court actions. (see attached Group Exhibit.)

Plaintiff BOURKE'S rather novel theory in her complaint, filed herein, seems to be that, being the unsuccessful party to the law suit, she has somehow been denied her constitutional rights because she lost the law suit and the successful party and her attorneys are somehow co-conspiratory in denying those rights. She says that, without

citations, the Award and Judgment are void on their face. She claims that, without the due process of the 14th Amendment the Court was without jurisdiction of the subject matter and deprived her of her property. She also claims that her rights to free speech were violated. These are a rehash of the arguments made to the California Supreme Court, and the U.S. Supreme Court, which were denied unanimously. She contends that the attorney defendants were fraudulent and in bad faith by merely representing SCHUMAN, without citation. BOURKE is also, for the first time, complaining of being denied equal protection by reason of gender. This is equally novel, especially when both parties to the underlying action were of the same sex. The Sixth cause of action is a mystery, but sounds like a Motion to be relieved of a judgment which arises out of the \$2,500.00 sanctions awarded by the Appellate Division of the Alameda Superior Court against her. She has requested punitive damages against



the lawyers, presumably for winning. It should be pointed out that in plaintiff's heading of the complaint her citation - 28 U.S.C. 400 - doesn't exist, so defendants are at a loss to understand what plaintiff means.

Plaintiff gives us no clue in the multitude of causes of actions she attempts to plead. It is difficult to see how plaintiff has been deprived of her due process rights, for example, when she has been represented in every step of this law suit, either by counsel (four to date) or by herself in propria persona. She has been present at every hearing, trial, arbitration, appellate hearing and review since she filed the complaint on May 27, 1982. She has received notice of every hearing and had, as a result, generated at least 25 pounds of pleadings. She has had eight different courts rule on her pleadings in the underlying California action. She just can't accept the fact that California law will not let her defame someone with

impunity. She will not accept the fact that a trier of fact did not believe her when she pled truth as a defense to the scurrilous language directed at Defendant, SCHUMAN. The plaintiff has attempted to take advantage of the fact that she is a licensed attorney by turning a several-hundred-dollar law dispute into a vendetta against defendants, the arbitrator, and the judges that have ruled against her on eight prior attempts. Plaintiff has raised, without success, the issues of void judgment, due process, free speech, gross legal errors in the award, and sanctions before the Courts of Appeal in California and the U.S. Supreme Court. She is trying this forum in an effort to re-litigate all the matters resolved in the litigation that has been on-going since May, 1982.

A reading of the complaint is sufficient to show its frivolous nature on its face. Any reasonably competent attorney, practicing before this court, would have a difficult

time understanding what plaintiff is saying, let alone finding any legal basis for it. The improper purpose is rarely as blatant as plaintiff has set forth. She doesn't want to pay off the judgment that is in force, in California, against her, e.g. when asked by the undersigned at the Order of Examination hearing how she intended to pay off the judgment, Bourke replied, "I don't intend to pay the judgment." What better way to avoid payment than to create new litigation (the 9th attempt)? There is no doubt that almost six years of litigation, hundreds of dollars in costs, and untold hours of court time spent litigating and re-litigating the same issues is more than a mere bother, vexing or annoying. It is a burden on the entire court system to have to deal with this vexatious litigant and her multiple actions on the same subject. Plaintiff's bad faith (not a Rule 11 requirement) is blatantly obvious throughout the complaint. The unfounded charges, the charged language, all lend

credence to the lack of merit of the entire complaint. Defendants have answered and raised several affirmative defenses, including res judicata, and that the complaint is not well founded in fact or warranted by law, and was filed solely for the purpose of harassing the defendants and delaying the collection of a valid state judgment and to needlessly increase the costs of litigation, all in violation of the letter and spirit of Rule 11. These defenses stand out when viewed in conjunction with the chronology of the underlying action. The court will be asked to take judicial notice of the pleadings and files in the underlying actions, which, when viewed together with the complaint, will make it clear that plaintiff is engaged in a vendetta against everyone attached to this matter and is resolved to harass them in hopes that they will lose their will and abandon the cause and she won't have to pay the judgment after all. This is an improper purpose.

Plaintiff's complaint should be dismissed, and she should be sanctioned and enjoined from filing any similar actions against defendants in this court or any other court under penalty of losing her privilege of practicing before this court. The undersigned spent a minimum of 15 hours answering the complaint, researching and writing this Motion, declaration and memorandum of law. My hourly rate is \$150.00 per hour, which is a reasonable rate for an attorney that has been in practice for almost 24 years. I would respectfully suggest that a sanction of \$5,000.00 would be reasonable and would act as a deterrent to plaintiff's future conduct.

I declare under penalty of perjury that the foregoing is true and correct and is offered in support of the above-entitled motion and is not imposed for any improper purpose or motive. Dated this 20 day of Jan., 1988 at Oakland, California.

s/ William D. Gibbs

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

--000--

BEFORE THE HON. J. P. VUKASIN, JR., MAGISTRATE

PATRICIA M. BOURKE, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 JEANNE SCHUMAN, WILLIAM )  
 GIBBS, DAVID HIMMELMAN, )  
 DOES I-X, )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

NO. C 87-5134 JPV

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FEBRUARY 25, 1988

APPEARANCES:

FOR THE PLAINTIFF: GREGORY S. STOUT, ESQUIRE  
220 MONTGOMERY STREET, #1010  
SAN FRANCISCO, CA 94104

FOR THE DEFENDANTS: WILLIAM D. GIBBS, ESQUIRE  
169 - 14TH STREET  
OAKLAND, CA 94604

REPORTED BY: JOAN DINNING, PRO-TEM REPORTER

EXCERPTS ONLY FROM ORALS BEFORE  
HON. J. P. VUKASIN, JUDGE OF  
THE U.S. DISTRICT COURT

REPORTER'S TRANSCRIPT p.4 lines 20-25, p. 5  
lines 1-18

THE COURT: OKAY. THIS IS TERRIBLE. IT'S BEEN REPRESENTED TO THIS COURT THAT BOURKE CALLED SCHUMAN A "KIKE" AND A "BITCH". THAT BOURKE CALLED THE CALIFORNIA BAR ASSOCIATION AND THE OAKLAND POICE, SOME FEES WERE EXCHANGED. BOURKE FILED SUIT IN MUNICIPAL COURT; BOURKE ALSO COMMENCED PROCEEDINGS AGAINST SCHUMAN BEFORE THE BAR ASSOCIATION; WROTE LETTERS TO THE TWO SOCIAL SECURITY CLAIMANTS, STASKA AND HORNOF; AND THEN BOURKE FILED SUIT AGAINST THE TWO SOCIAL SECURITY CLAIMANTS APPARENTLY WHEN THEY REFUSED TO COOPERATE WITH HER. SHE'S ALLEGED TO HAVE WRITTEN THE SOCIAL SECURITY ADMINISTRATION WHO SHE UNDERSTOOD TO BE SCHUMAN'S NEXT EMPLOYER AND ANOTHER PARTY WHOM BOURKE BELIEVED TO BE INTERESTED IN HIRING SCHUMAN. I THINK FOR THE RECORD SHE WROTE TO THE SOCIAL SECURITY ADMINISTRATION OVER THE FEES BEING COLLECTED BY SCHUMAN AND

THEN HAD COMMUNICATIONS WITH SCHUMAN'S PROSPECTIVE EMPLOYER, MR. HIMMELMAN, AND THEN ANOTHER INDIVIDUAL WHO SHE THOUGHT SCHUMAN MIGHT GO TO WORK FOR. SHE CALLED HIM DIRECTLY AND VOLUNTEERED THAT SHE COULD NOT GIVE SCHUMAN A GOOD REFERENCE, AND SOME 15 PIECES OF CORRESPONDENCE TO THEIR PARTIES. BOURKE USED THE WORDS "SPITEFUL", "IMPUDENT", "ARROGANT", "CHILDISH", "THIEF", "BLACKMAILER" AND "LITTLE EMBEZZLER".

Transcript p. 6, lines 5-9, Judge Vukasin continued...

BECAUSE OF BOURKE'S AUDACITY IN HANDLING THE AFFAIR, HE AWARDED SCHUMAN A TOTAL OF \$4,500. IN COMPENSATORY DAMAGES AND \$10,000 IN PUNITIVE DAMAGES AGAINST BOURKE FOR SCHUMAN'S DEFAMATION AND EMOTIONAL DISTRESS. ONE PASSAGE IN THE ARBITRATOR'S MEMO AND OPINION THAT I THINK BEARS REPEATING AND SHOULD BE NOTED IN THE RECORD. HE SAID, "THE AWARD HEREIN REFLECTS AMONG OTHER THINGS THE PROFOUND SENSE OF OUTRAGE FELT BY THE UNDERSIGNED AT THE INTEMPERATE UNWARRANTED, AND RELENTLESSLY HOSTILE ATTACKS CONDUCTED BY



BOURKE ON LITERALLY EVERY PERSON CONNECTED WITH THE UNFORTUNATE EPISODE..."

Transcript page 6 lines 24-25, p. 7 line 1  
Judge Vukasin continued:

I THINK THE RECORD SHOULD NOTE BOURKE CONTINUED HER PURSUIT OF HER CLAIMS IN THE FOLLOWING MANNER. (there follows an itemization of the appeals and writs taken in the State Court System).

Transcript p. 8 line 6, Judge Vukasin continued:

APPARENTLY, THIS ACTION IS BASED ON A CLAIM THAT SHE WAS DENIED DUE PROCESS...

Transcript p. 8 lines 8-14, Mr. Stout: (Petitioner's counsel): ESSENTIALLY THAT THE JUDGMENT BELOW IS A SHAM JUDGMENT BASED ON OBVIOUS ERRORS OF LAW, BOTH OMISSION AND COMMISSION. I WOULD ONLY POINT OUT TO THE COURT THAT UNDER CALIFORNIA LAW, AS THE COURT WELL KNOWS, SECTION 47 OF THE CIVIL CODE IS A LITIGATION PRIVILEGE THAT IS ABSOLUTE AND SUBSTANTIVE UNDER CALIFORNIA LAW...

Transcript p. 8 lines 19-25, Mr. Stout continued)

THE POINT OF THE SITUATION IS THAT BOTH THE CALIFORNIA SUBSTANTIVE LAW PRIVILEGE APPLIES BOTH TO THE PRELITIGATION CONTEXT AND TO THE LITIGATION CONTEXT. AND WE CONTEND BASICALLY AND ESSENTIALLY THAT EVERYTHING HEREIN IN THE WAY OF JUDGMENT PREDICATES ITSELF UPON COUNTS 4 AND 5 AND WILFULL INFLICTION, AND BOTH ARE COVERED BY THE PRIVILEGE UNDER SECTION 47.

Transcript p.9 lines 1-7 (Mr. Stout Contd.)

...AND IT WOULD APPEAR THAT EACH OF THE FEDERAL DISTRICTS AND CIRCUITS ARE BOUND BY THE SUBSTANTIVE LAW OF THE STATES ON THOSE TYPES OF CASES WHERE THE PARTICULAR ISSUE IS RAISED. IT'S OUR POSITION THAT THE SUBSTANTIVE RIGHTS PROTECTED BY SECTION 47 HAVE BEEN ABROGATED ALL ALONG THE WAY...

(Transcript p. 10, l. 4-5, Mr. Stout contd)  
ADVOCATIONAL IMMUNITY ALSO RUNS THROUGH THE WHOLE SITUATION.

(Transcript p. 10 lines 12, 14, 16-25, Judge Vukasin:)

THE COURT: ALL RIGHT. I WANT TO RESPOND TO

THAT. PLAINTIFF ARGUES THAT PORTIONS OF THE JUDGMENT SHOULD BE ENJOINED BECAUSE IT IS VOID. PLAINTIFF HAS ARGUED THAT THE ARBITRATOR'S AWARD WENT BEYOND HIS STATUTORY AUTHORITY ON THE GROUND THAT THE ARBITRATOR ARE (sic) AWARDED DAMAGES FOR CLAIMS NOT MADE IN SCHUMAN'S COUNTER-CLAIM. THIS ARGUMENT IS WRONG FOR SEVERAL REASONS. FIRST THE ARBITRATOR AWARDED DAMAGES FOR DEFAMATION AND EMOTIONAL DISTRESS, WHICH CLAIMS WERE PLED IN THE COUNTER-CLAIM. SECOND, CALIFORNIA RULE OF COURT 16.5 PERMITS THIS AWARD. IT AUTHORIZES ENTRY OF AN ARBITRATION AWARD AS A FINAL JUDGMENT. THIRD, DESPITE PLAINTIFF'S ARGUMENT TO THE CONTRARY, THE ARBITRATOR'S FINDINGS AND CONCLUSIONS ARE WELL-FOUNDED IN FACT AND LAW. PLAINTIFF'S BRIEF IS FULL OF CITES TO INAPPLICABLE CASES AND SHRILL ACCUSATIONS DIRECTED TO EVERYONE IN THIS CASE. ADDITIONALLY, THE PLAINTIFF HAS FILED A SUPPLEMENTAL BRIEF IN SUPPORT OF THE TEMPORARY RESTRAINING ORDER, ENJOINING THE ALAMEDA COUNTY SUPERIOR COURT FROM ENFORCING

ITS SANCTION AWARD AND ITS BENCH WARRANT...

(Transcript p. 11, lines 23-25, p. 12, l. 1 opposing counsel Gibbs):

WHAT SHE DID NOT DO WAS OBEY THE COURT'S ORDER OF PAYMENT OF SANCTIONS. I WENT IN AND MOVED FOR AN ORDER TO SHOW CAUSE RE CONTEMPT IN THE ALAMEDA COUNTY SUPERIOR COURT APPELLATE DIVISION...

(Transcript p. 12 l. 190-25, Mr. Gibbs continued)

....MR. STOUT HAD FILED A PACKET OF PAPERS WITH THE COURT, THE ALAMEDA COUNTY APPELLATE DIVISION... NO REQUEST FOR CONTINUANCE WAS MADE TO MY OFFICE OR TO ME; AND JUDGE MCKIBBEN ON THAT MORNING WHEN I APPEARED IN COURT AND NO ONE SHOWED, DID NOT GRANT THE REQUEST SUCH AS IT WAS FOR THE CONTINUANCE BECAUSE IT WAS NOT TIMELY FILED, WAS NOT PROPERLY FILED OR NOTICED, AND A BENCH WARRANT ISSUED. THE \$50,000 CASH BOND WAS PART OF THAT BENCH WARRANT.

(Transcript p. 12, lines 24-24)

THE COURT: SUCH A CONTEMPT SANCTION AND BENCH WARRANT ARE JUSTIFIED UNDER THE CIRCUMSTANCES

IN MY OPINION. I'M DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER. WE HAVE DEFENDANTS' MOTION TO STRIKE OR DISMISS THE COMPLAINT PURSUANT TO RULE 11. THE NINTH CIRCUIT HAS DEFINED THE STANDARDS FOR RULE 11, THE PLEADING MUST BE REASONABLE UNDER THE CIRCUMSTANCES, THE PLEADING NEED NOT BE IN WILFULL BAD FAITH FOR RULE 11 SANCTIONS TO BE IMPOSED. COURT ALSO NOTED THAT WITHOUT QUESTION SUCCESSIVE COMPLAINTS BASED UPON THE PROPOSITIONS OF LAW PREVIOUSLY REJECTED MAY BE HARRASSMENT UNDER RULE 11.... PLAINTIFF IS SIMPLY TRYING TO HARASS AND VEX THE DEFENDANTS, IN MY OPINION. I THINK THE COURT SYSTEM IS BEING USED IMPROPERLY...

(Transcript p. 14 lines 20-23, Judge Vukasin):  
THE COURT: ...I'M GOING TO GRANT THE MOTION TO DISMISS PURSUANT TO RULE 11. IN ADDITION, I AM GOING TO IMPOSE SANCTIONS, AND I AM GOING TO GRANT SANCTIONS OF \$5,000 AS REQUESTED BY DEFENDANTS.

IN THE MUNICIPAL COURT OF THE STATE OF  
CALIFORNIA, IN AND FOR OAKLAND-PIEDMONT-  
EMERYVILLE JUDICIAL DISTRICT

PATRICIA M. BOURKE

Plaintiff,

NO. 389281

VS-

JEANNE SCHUMAN,

Defendant. / ORDER OF EXAMINATION  
/ OF PATRICIA M. BOURKE

AND RELATED CROSS-  
ACTIONS

Taken before Claudia J. Knap, a Notary  
Public, In and for the County of Alameda  
State of California

May 20, 1988

HON. LEWIS MAY, PRESIDING

(Pertinent Excerpts Only...

(Page 3 lines 3-13:)

GIBBS: My name is Mr. Gibbs. I am an  
attorney. I represent the interest of Jeanne  
Schuman, who is a cross-defendant in an action  
entitled Patricia M. Bourke v. Jeanne Schuman,  
Action Number 389281 in the Piedmont-  
Emeryville Judicial District.

It is May 20, 1988. The time is approximately 2:43. We are in Department 1 of the above entitled court appearing on an Order to Appear for examination. The order was personally served on Patricia M. Bourke on the 29th day of April, 1988, in the Alameda County Superior Court.

(p. 3 line 21-22:)

GIBBS: Madam Reporter, please swear this witness.

(p. 4 lines 11-14)

GIBBS: You consider yourself to be a sworn witness for the purposes of this examination?

BOURKE: to the extent I give you actual statements, yes, sir.

(p. 5 lines 10-13)

GIBBS: Right now this is an Order of Examination and you are a judgment debtor in the above action that we've been talking about; is that correct?

BOURKE: The judgment is void, sir, and you know it.

(p. 5 lines 16-17:)

GIBBS: Where do you reside?

BOURKE: I refuse to answer any under Evidence

Code 940.

(p. 5 lines 24-26, p. 6 line 1:)

GIBBS: Are you currently employed?

BOURKE: I will invoke the Evidence Code 940 as to any question relative to my living circumstances, assets or income.

(p. 6 line 4)

BOURKE: I have a memo here for the Court.

(p. 6 lines 10-26, p. 7 lines 1-12)

JUDGE MAY: Ms. Bourke has handed me through the clerk a document entitled "Memorandum of Points of Authorities In Re the Invocation of E.C. 940 at the Order of Examination."

There is presently pending an order to show cause in re contempt, in re the failure of cross-defendant to pay sanctions in the amount of \$2,500. Said proceeding is for the purpose of imposing criminal quasi punishment (sic) on the cross-defendant, if it can be demonstrated that cross-defendant had ability to pay said sanctions and refused. Consequently, the cross-defendant invokes the provisions of 940 in connection with any and all questions relative to her assets, income



and her present living circumstances in that the answers may tend to incriminate her. That means incriminate her in the Superior Court or the pending case where there is an order to show cause in re contempt.

BOURKE: Yes, ma'am. (sic) There is (sic) also sanctions from the Federal Court. I don't believe the Fifth Amendment requires an actual -- even if this matter be pending, if potential criminal charges could come from a person's own testimony, whether it be contempt charges in say a dissolution case or something like that. I don't think you have to answer any question that may tend to incriminate you, even though there actually is no proceeding presently pending.

(p. 7 lines 18-26, p. 8 lines 1-11)

BOURKE: I don't think any question like that has to be answered and if it could tend to incriminate, that comes within the Fifth Amendment rather squarely. In this case there are sanctions right within this judgment. It really isn't a separate matter and I have been ordered to appear before Judge McKibben on the

7th of June relative to the contempt that was brought by this judgment (sic) in connection with this case. And one of the elements of their proof is the ability to pay. And what he'd like to find out for (sic) me now is what my earnings are and what my living circumstances are, all of which adds up to ability to pay. So it seems to me to be square on, open shut (sic). The Fifth Amendment is very broad. In fact, the case that I had down here says great latitude. In fact, I have a case here regarding judgment debtor proceedings where they're tied into a potential contempt citation. That's exactly what we have and it seems to me to be square on.

(p. 8 lines 15-26, p. 9 lines 1-8)

GIBBS: Today, Your Honor, an order to appear for examination was issued out of this court, was served upon Patricia M. Bourke which a deputy sheriff of the County of Alameda personally directed her to appear at this time and place for examination. That is all that's

before the Court. This was the first time I've seen the memorandum served upon me approximately 45 minutes ago. Frankly, I think its a crock, but I haven't had a chance to research the cases. What the judgment debtor is seeming to say is, "Na, na, na, na, na. You've got a judgment but you can't ask me any questions about it because if I answer any questions about it, it might tend to incriminate me in some other proceeding that isn't before the Court." There are two sanction orders, one by the Superior Court Appellate Court (sic) in the Alameda County for \$2,500.00 and one for \$2,500.00 issued by the U.S. District Court, Ninth Circuit. These are entirely separate matters from the judgment...

(p. 9 lines 16-26, p. 10 lines 1-26, p. 11 1-5:)

GIBBS: I intend to ask her that question under oath with a Court Reporter present and frankly, I think I'm entitled to, since a sufficient time has lapsed between the two orders, to ask her questions to what she's

done with her assets and where she lives and things like that. She hides behind her P. O. Box in her quote "professional practice" and she's been very hard to serve. I've got jurisdiction of her now before this Court and I don't want to lose it. She's wily, she's using every dodge that she can think of to avoid having to pay a judgment that the Supreme Court of the United States has refused to set aside and we're going to do everything we can to get that judgment.

BOURKE: May I speak? If what we're dealing with here is a separate judgment, I just want to say this is as (sic) an aside so Your Honor will not think poorly of me as a result of this dissertation that just occurred. This matter is now before the Ninth Circuit. The District Court Judge, John Vukaskin, threw this out of court. Made statements on the record which are diametrically opposed to both federal and state law. There is (sic) federal grounds here. I have been advised by a rather prominent constitutional lawyer all the way

through. The underlying judgment is void, lacking in due process, notice and hearing. In fact, I have a memorandum of points of authorities (sic) here before me right now that I would like to give you to ask that you vacate this judgment sua sponte. I have approached another judge in the Municipal Court with a similar petition or memo or whatever it is. My fear is that the matter has now become political and that the judges are refusing it to do (sic) for that purpose, although your colleague did say that it was void but he didn't want to vacate it because of his friendship for one of the members of the panel in the Alameda County Superior Court that refused to vacate in the past and accept sanctions (sic) which makes the whole thing come in as slightly incredible. But if you were to read the arbitrator's statement, you mind find the like of which you 've never read before in your life.

(p. 11 lines 14-26, p. 12 lines 1-13:)

...we don't have a straight judgment

here. In fact, we have sanctions from two different courts which are an order, not just judgment. So on that basis, the judgment creditor brought a contempt proceeding which is continuing to pend based on those sanctions from Alameda Superior Court and that matter has been continued until June 7th at which point I either pay the sanctions or be held in contempt of court if Mr. Gibbs in (sic) a position to prove that I have the ability to pay and refuse to do so. What he'd like from me today is proof of my ability to pay out of my own mouth. And that is squarely, on all fours, exactly what is prohibited by the Fifth Amendment. We aren't just dealing with a debt and a judgment. If we were, then the invocation of the Fifth Amendment would certainly be questionable. But given the fact that there are sanctions and that there is actually contempt proceeding right now, that would like to have me found in contempt of court on June 7th and the only threat (sic) in his fabric that is lacking is ability to pay and he'd like me to tell him about that today,

and he'd like an order from you forcing me to do that. I have put a memo in front of you. If there is any aspect of the matter --

(p. 12 line 13, line 17-22)

JUDGE MAY: I've read the memo... I've read the memo and I've perused the file. And the case, it appears, has gone to judgment and gone up on appeal and hasn't it been affirmed on appeal?

GIBBS: Before the California Supreme Court and United States Supreme Court.

(p. 13 lines 1-15)

JUDGE MAY: I am ready to rule now, Ms. Bourke, and I feel this is a proper order of examination and I think you should take the stand and answer the questions.

BOURKE: I guess I am in contempt of court because I won't do that.

JUDGE MAY: You can take the stand, be sworn and we'll ask the questions.

BOURKE: I would like to have further opportunity to brief the matter or continue it to another day or until I have counsel

present.

JUDGE MAY: No. This is all ready. It's been set and calendared and brought before a commissioner and is now back here again. You may take the witness stand and be sworn.

(p. 14 line 18)

CLERK: Do you solemnly swear... (witness is sworn)

(p. 14 lines 25-26, p. 15 lines 1-3)

GIBBS: State your name for the record, please?

BOURKE: Patricia M. Bourke

GIBBS: Where do you reside, Ms. Bourke?

BOURKE: I refuse to answer on the grounds that it is a connecting link to information about my assets...

(p. 15 lines 12-26, p. 16 lines 1-8:)

BOURKE: My present living circumstances are a matter of the Fifth Amendment privilege.

GIBBS: Your honor, I am asking you to direct the witness to answer the question.

JUDGE MAY: The Court will direct you to answer the question.

BOURKE: I am in contempt of court then if that's what you want to say because I have my



rights. I have constitutional rights, I have an attorney who has advised me in this way and I have researched the law. If you want more points and authorities on the subject--I don't understand why it is you think that this doesn't apply.

JUDGE MAY: I don't want you to go on, Ms. Bourke. As far as I know, I do have authority don't I, to put you in contempt and put you in jail for contempt.

BOURKE: If that's what you wish to do.

JUDGE MAY: I'm going to warn you that I will research that and make certain of that and I am going to warn you that these answer may result in my placing you in custody.

BOURKE: I am aware of that, but I do have Constitutional rights, I hope.

JUDGE MAY: Do you hear me when I tell you to answer the question as to your present place of address?

(p. 16 lines 14-26, p. 17 lines 1-12:)

JUDGE MAY: Do you hear the question?

BOURKE: Yes.

JUDGE MAY: Do you understand the question?

BOURKE: Yes.

JUDGE MAY: We'll set that aside to be cited for contempt.

GIBBS: All right, Your Honor.

GIBBS: Ms. Bourke, will (you)(sic) answer any questions directed to your assets that you currently hold, as of May 20, 1988.

BOURKE: No.

GIBBS: Your honor, I will ask that the court direct the witness to answer any questions put to her relating to her assets that she holds as of May 20, 1988.

JUDGE MAY: I would so direct you.

BOURKE: Invoke the Fifth Amendment.

JUDGE MAY: You have heard the question and understand it, and I will cite you in that regard.

GIBBS: Are you employed?

BOURKE: I will take Evidence Code 940, often known as the Fifth Amendment.

GIBBS: Your honor, I will ask that you direct the witness to answer the question regarding employment.

JUDGE MAY: I direct you to answer regarding your employment.

(p. 17 line 26, p. 18 lines 1-8)

GIBBS: Where do you practice law; where do you have your office?

BOURKE: I refuse to answer on the grounds that it is a link which would tend to assist you in proving contempt.

JUDGE MAY: You asked me to direct her to answer?

GIBBS: Yes, your Honor. That will be a standing request if she refuses to answer on Evidence Code 940 or the Fifth Amendment.

JUDGE MAY: I will direct you to answer.

(p. 18 lines 22-26, p. 19 lines 1-16:)

(There followed questions regarding property owned, property sold, bank accounts, loans made, notes and deeds of trust held. Bourke invoked the Fifth Amendment (Ev.Code 940) to each question, with Judge May citing her for contempt each time)

JUDGE MAY: Ms. Bourke, we're getting on in the afternoon. I am going to give you a warning that I am going to put you into custody today if you do not answer these questions today, this afternoon.

BOURKE: I get one phone call, don't I?

JUDGE MAY: Yes. You get one phone call.

BOURKE: I guess this case is coming to this and it is a political matter, and I understand what's happening to me.

JUDGE MAY: There is nothing political about my decision. I am telling you you must answer these questions in a normal course in an Order for Examination.

BOURKE: Would you explain why you don't think the Fifth Amendment applies?

JUDGE MAY: I am not going to explain. You're fully aware of the law.

BOURKE: My understanding of the law is it's open and shut.

JUDGE MAY: Don't be surprised that I am going to open that door and put you in jail if you don't answer.

BOURKE: I am prepared for that. I am seeing this through the whole way. I have proceedings here for you to see that it is a void judgment.

(p. 24 lines 12-26, p. 25 lines 1-15:)

JUDGE MAY: ...This apparently isn't an

ordinary order of examination because it does appear that I'm going to have to put Ms. Bourke in jail. If you just limit questions strictly limited to assets and any assets she has which could be used to help pay this judgment that you have.

(There followed further questions regarding Bourke's accounts receivable and life insurance, with Bourke citing the Fifth Amendment to each question, and Judge May holding her in contempt for each refusal).

BOURKE: You want information out of my own mouth so you can convict me of contempt. This is unbelievable.

GIBBS: This is not a contempt proceeding.

BOURKE: I am flabbergasted at your ruling.

JUDGE MAY: You're a witness now and I have heard your argument and I have ruled that the Order of Examination must proceed and it is proceeding, and if you have any more questions, Mr. Gibbs --

GIBBS: Your Honor, it's obvious that we have reached a point where any question I might ask relative to assets is not going to be answered by Ms. Bourke and I believe sufficient ground

has been laid for the asking of the questions. She is persisting in refusal. I would ask the court to hold her in contempt accordingly...

(p. 26 lines 17-26, p. 27 lines 1-26:)

JUDGE MAY: I am finding you on contempt on all the questions cited and I am going to order you to serve five days in jail. And, do you wish a stay of execution?

BOURKE: I am not represented by counsel right now. I am puzzled as to why your Honor does not find the Fifth Amendment applicable and I would like a further opportunity to brief that. I am not sure if it's because it's a separate proceeding, is it because it's contempt and not straight criminal?

JUDGE MAY: I have already heard your argument and I have read and considered your brief and I have proceeded with the Order of Examination, and now I've cited you for cotempt and I am sentencing you to five days in jail for this contempt. I am asking you a simply question: Do you want a stay of execution?

BOURKE: Yes. I am preparing papers right now

for the Federal Court to have a summary reversal and a stay of the entire proceeding. This could become part of it. So, I think they could hear that probably within 30 days.

JUDGE MAY: I'll stay the execution until Wednesday of next week at 2:00 p.m.

BOURKE: There is to be no further hearing?

JUDGE MAY: I am just granting you a stay of execution. You can consult with counsel in the meantime. Otherwise, come prepared to serve your five days in jail.

BOURKE: That's next Wednesday?

JUDGE MAY: Yes. 2:00 p.m.

DISTRICT COURT OF APPEAL OF THE STATE OF  
CALIFORNIA, IN AND FOR THE FIRST  
APPELLATE DISTRICT

PATRICIA M. BOURKE,

Petitioner and  
Appellant

vs-

OAKLAND-PIEDMONT  
EMERYVILLE MUNICIPAL  
COURT,

Alameda Co. Sup.  
#639042-6  
Dist. Ct. Appeal  
#A043520

Respondent.

JEANNE SCHUMAN,

Real Party in Interest /  
/

---

REPORTER'S TRANSCRIPT  
ON APPEAL FROM FINAL  
JUDGMENT OF THE SUPERIOR  
COURT OF THE STATE OF  
CALIFORNIA IN AND FOR  
COUNTY OF ALAMEDA

6/29/88

HON. MICHAEL BALLACHEY, PRESIDING JUDGE

COUNSEL FOR APPELLANTS: COUNSEL FOR  
RESPONDENTS:

Patricia M. Bourke  
In Propria Persona

William Gibbs  
Attorney at Law



Only the most pertinent parts of the transcript as related to "void judgment" are herein reproduced. The within hearing dealt with both the Municipal Court Contempt arising from Order of Examination, and also with Petitioner's attempt to secure an order declaring it a "void judgment". The Superior Court set aside the contempt found by Judge May at the Order of Examination, pursuant to Ev. Code 940, and hence court and counsel's remarks related to that issue are not herein involved.

(p. 2 lines 7-28, p. 3 lines 1-6)

GIBBS: William Gibbs, Your Honor, on behalf of Respondent.

BOURKE: Patricia Bourke, pro per. I'm an attorney.

JUDGE: You actually represent the real party in interest, is that right, Mr. Gibbs?

GIBBS: That is correct, real party in interest Jeanne Schuman.

JUDGE: I issued a tentative ruling in this matter denying the writ, and I have read this over again, and I think the following -- I think the writ should unquestionably be denied and the judgment be void on its face, and I think that's becoming, if nothing else, Ms. Bourke, a

financial problem for you because you have now been told by twenty-nine judges.

GIBBS: Yes, your honor.

JUDGE: At least two -- I don't know how many of whom, but at least three of whom have felt that it was frivolous to keep raising the issue and that you should stop raising the issue. I'm not going to complicate your life by imposing sanctions because it's frivolous, but I'm going to deny the writ on those grounds. But, I do think that -- I think there is a serious problem posed by the Fifth Amendment assertion as long as there are proceedings pending in which Ms. Bourke's asset picture is an element of the case against her, unless there is a grant of immunity.

(p. 6 lines 21-28, p. 7 lines 1-5)

JUDGE: ...The writ is specifically denied as it pertains to the assertion that the judgment, the underlying judgment is void on its face.

BOURKE: Couldn't I address that first?

JUDGE: What?

BOURKE: Can I not address that issue?

JUDGE: If you want to say something that you have not said in your pleadings, you may.

BOURKE: Well, your Honor, you've made a number of statements here that I realize, you know, this is one among probably twenty cases. This is something I have lived with for three years, researched it very carefully, both state and federal.

JUDGE: ...You are wrong in your analysis of the res judicata issue and the void on its face, and your attempts to quote from various authorities... We have in this system of justice a principle called res judicata.

BOURKE: Right, that's what my research is about.

JUDGE: We have principles, talk about reference to arbitration, binding arbitration, appeals, attempt to vacation (sic) judgments, appeals with decisions rendered on appeal, all of which are

designed for the very legitimate policy reason to put cases to rest, to put them at end. And this case, in the famous words of American philosopher Yogi Berra, it's over. Until you find someone who is of interest to take it other than in this remedy, so this writ is denied. I don't want to hear any argument. I don't need any argument. I agree with the twenty-nine other judges who have addressed the issue, three of whom are on this appellate court. You know, we don't have peer review in our system of justice. I am not about to reverse a finding of the Appellate Division of this Court. So I don't want to have anymore argument on the issue. The writ is denied.

BOURKE: That's exactly what I was going to say. They didn't address the issue. They wrote one opinion on sanctions and ignored the entire issue.

JUDGE: That's not correct, is it?

GIBBS: That is correct, Your Honor.

BOURKE: Yes, it certainly is correct, and

I would be glad to give you --- I don't know--

JUDGE: I read the opinion, Ms. Bourke.

BOURKE: They didn't address the variance issue. What we're saying here is that defamation does not have to be specifically pleaded. We have whole letters on which the statute of limitations had run, which were privileged --

JUDGE: I'm going to call another case.

FILED  
Jul. 8, 1988  
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICIA M. BOURKE,	)	
	)	
Plaintiff/Appellant	)	No. 88-2446
	)	
vs-	)	DC# CV-87-5134-JPV
	)	Northern California
JEANNE SCHUMAN, et al	)	(San Francisco)
	)	
Defendants/Appellees	)	ORDER
	)	

Before: POOLE and O'SCANNLAIN, Circuit Judges

The Motion for Summary Reversal is denied. The motion for a stay pending appeal is denied.

Appellant is directed to read the provisions of Fed. R. App. P. 38 and is admonished that she may be subject to sanctions if this appeal proves frivolous.

Appellant shall serve and file a brief within 40 days after the filing of this order. Further briefing shall proceed in accordance with Fed. R. App. P. 31(a).

MoCal 7/6/88

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FILED  
OCT. 6, 1988  
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PATRICIA M. BOURKE,	)	
	)	
Plaintiff/Appellant	)	No. 88-2446
	)	
vs-	)	DC# CV-87-5134-JPV
	)	Northern California
JEANNE SCHUMAN, et al	)	
	)	MOTION TO AUGMENT
Defendants/Appellees	)	RECORD, SUPPORTING
	)	DECLARATION, MEMO

---

SUMMARY ONLY

THE MOTION, SUPPORTING DECLARATION, AND MEMO COMPRISED 18 PAGES. THE ITEMS WHICH APPELLANT SOUGHT TO PUT BEFORE THE NINTH CIRCUIT CONSISTED OF DOCUMENTATION OF THE SUBSEQUENT COLLECTION PROCEEDINGS AFTER FEDERAL COURTS DENIED A STAY. HER PURPOSE WAS TO DEMONSTRATE HARASSMENT, THE LIKELIHOOD OF A CONTINUING CONSPIRACY BETWEEN APPELLEES AND THE ALAMEDA COUNTY JUDGES TO VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS, AND TO ALSO DEMONSTRATE WHY APPELLANT COULD NOT REALISTICALLY EXPECT TO OBTAIN ANY REDRESS IN STATE COURTS, TO WIT:

1). Order to Show Cause Re Contempt permitting service of contempt by mail.

2). Order issuing Bench Warrant on a mailed notice (continuing O/S/C to 1/11/88).

3). Order effectuating bench warrant establishing bail at "\$50,000.00 cash only" based on an order to pay only \$2,500 in sanctions.

4). Memo of points and authorities demonstrating clear impropriety of contempt/ bail requirements under California law.

5). Transcript of Order of Examination wherein Appellees' counsel procures Municipal Court judge to sentence Appellant to jail for invoking Fifth Amendment and refusing to answer questions related to her assets when contempt proceeding was actually pending and "ability to pay" was the element to be proved.

6). Dismissal of contempt by Superior Court.

In her Declaration Appellant also described what had occurred in Superior Court before Hon. Michael Ballachey relative to "void



judgment"...no transcript being yet available. She also indicated the matter (void judgment) was being appealed to the Fifth Division of the First Appellate Division of California District Court of Appeal and then explained at length why and how the past record of this division indicated that this Division would likewise be likely to fail to protect her rights.

FILED  
OCT. 24, 1988  
Cathy A. Catterson,  
Clerk U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICIA M. BOURKE,	)	
	)	
Plaintiff/Appellant	)	No. 88-2446
	)	
vs-	)	DC# CV-87-5134-JPV
	)	Northern California
JEANNE SCHUMAN, et al	)	
	)	ORDER
Defendants/Appellees	)	
	)	

---

Appellant's Oct. 6, 1988 motion, her supplemental excerpts and the October 17, 1988 response are referred to the panel that will consider the merits of this appeal.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court:

Cathy A. Catterson  
Clerk of the Court

---

Cole Benson  
Deputy Clerk

pro 10.17

Endorsed filed  
By Ninth Circuit 12/7/89

UNITED STATES CIRCUIT COURT OF APPEAL  
NINTH CIRCUIT

PATRICIA M. BOURKE,	)	
	)	
Appellant	)	
	)	
vs-	)	No. 88-2446
	)	
	)	Dist. Ct. No.
	)	C-87-5134
JEANNE SCHUMAN,	)	
WILLIAM GIBBS, et al	)	
	)	
Respondents.	)	
	)	

APPELLANT'S SUBMISSION OF ADDITIONAL CASES

APPEARANCES:

For Appellant:

Patricia M. Bourke  
Attorney In Pro Per  
P. O. Box 415  
Walnut Creek, Ca.  
94696

For Respondents:

William Gibbs  
Attorney at Law  
169 14th Street  
Oakland, Ca. 94612

Ph: (415) 944-4718

Ph: (415) 893-2270

Caldeira v. County of Kauai (9th Cir. 1989)  
866 F. 2d 1175.

A federal court reviews de novo a district court's ruling on the availability of res judicata both as to claim preclusion and issue preclusion. (p. 1177)

Federal courts must give the same full faith and credit to judicial proceedings of any state as those proceedings would enjoy under the laws of the state where the judgment was rendered. (p. 1177, p. 1178)

Where the various levels of state courts have affirmed an arbitration award, the federal district court must determine if those state proceedings (both the arbitration and the state court proceedings) provided the Appellant with a full and fair opportunity to litigate his claims. If neither the arbitrator nor the state courts addressed the federal claim(s) then federal intervention is appropriate. (p. 1178, 1179, 1180)

Redetermination of the issues in federal court is also appropriate if there is reason to doubt the quality, extensiveness, or fairness,

of procedures followed in prior litigation.  
(p. 1180)

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J. R. Norton Co. v. Agricultural Labor  
Relations Board (1987) 192 CA 3d 890, 238 Cal  
Rptr 87.

"The province of the (Labor Relations) Board is to resolve, not to find, issues. Where evidence is introduced on one issue set by the pleadings its introduction cannot be regarded as authorizing the determination of some other issue not presented by the pleadings." (p. 94)

A litigant must have an opportunity to gather evidence or prepare legal arguments refuting the events which form the basis for a judgment against him. Fundamental fairness includes both the right to adequate notice and the right to defend against charged violations. The lack of notice runs contrary to elementary constitutional principles of procedural due process and requires that any resulting judgment be set aside. (p. 94)

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Gutierrez v. Bowen (S.D.N.Y. 1989) 702 F.  
Supp. 1050, 1061

Res judicata should not be applied to an otherwise final judgment if substantive due

process is not met. It is not met where the judgment before the federal court is so clearly wrong as to amount to a display of arbitrary power, and not an exercise of judgment. The same test applies to state court judgment brought into federal district courts as to federal decisions.

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P. Edward A. By and Through Nolan v. Williams  
(1988) 696 F. Supp. 1432

Even if a state court proceeding is still pending in the state courts, and Younger v. Harris (1971) 401 US 37, 91 S. Ct. 746, 27 L. Ed. 2d 669, would therefore apply, the federal court should still intervene if there is a sufficient showing that the pending state action is motivated by a desire to harass or is conducted in bad faith. (p. 1435)

Likewise, federal courts ought not to abstain if the state court proceedings have not afforded an opportunity to raise the constitutional claims. (p. 1437)

F.E. Trotter, Inc. v. Watkins (9th Cir. 1989)  
869 F. 2d 1312.

A defendant entitled to a qualified immunity when prosecuted under 42 U.S.C. 1983, loses his immunity if the unlawfulness of the challenged action was apparent. Immunity turns on the objective reasonableness of the conduct, not on a subjective showing of good faith. (p. 1315-1316)

A substantive due process claim requires proof that interference with property rights was irrational or arbitrary. (p. 1316)

There is no good faith immunity under section 1983 for private parties who act under color of state law to deprive an individual of his or her constitutional rights. (p. 1317-1318)

Respectfully submitted:

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Patricia M. Bourke  
Attorney In Pro Per

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
P. O. BOX 547  
SAN FRANCISCO, CALIFORNIA 94101  
April 19, 1989

In re: 88-3446 Patricia M. Bourke v. Jeanne Schuman

The United States Court of Appeals for the Ninth Circuit is considering submission of your case without argument. You have ten (10) days from the receipt of this letter to present a statement setting forth the reasons why oral argument should be heard in this case. Please send an original and three (3) copies of your statement to the Clerk's Office in San Francisco, and show proof of service to opposing counsel.

The court welcomes additional citations, without argument, of relevant decisions rendered since the filing of the party's last brief (see Rule 28(j) of FRAP). Send an original and three (3) legible copies to me, on letter size paper, with proof of service on all parties.

Very truly yours,

CATHY A. CATTERSON  
Clerk of Court

By: Tom Hom  
Deputy Clerk

cal/docs/screen34-4 (7/6/87)



FILED  
Dec. 5, 1989  
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PATRICIA M. BOURKE,	)	
	)	
Plaintiff/Appellant	)	No. 88-2446
	)	
vs-	)	DC# CV-87-5134-JPV
	)	Northern California
JEANNE SCHUMAN, et al	)	(San Francisco)
	)	
Defendants/Appellees	)	ORDER
	)	

Before: WRIGHT, HUG, and LEAVY, Circuit  
Judges

Appellant's motion to augment time for  
presentation of oral argument is DENIED. Each  
side is allotted 15 minutes per side for oral  
argument.

42 U.S.C. 1983, et seq.

- 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

- 1985. Conspiracy to interfere with civil rights

Obstructing justice; intimidating party, witness, or juror

(2) ... if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purposes of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws;...if one or more persons engaged

therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured...or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

- 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action;...But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

- 1988. Proceedings in vindication of civil rights; attorney's fees

...In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

- 1343. Civil rights and elective franchise  
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights, including the right to vote.

AMENDMENT VIII-EXCESSIVE BAIL,  
FINES,PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV-CITIZENSHIP; PRIVILEGES AND  
IMMUNITIES; DUE PROCESS; EQUAL PROTECTION;  
APPORTIONMENT OF REPRESENTATION;  
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT;  
ENFORCEMENT

Section 1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....

## FEDERAL RULES OF CIVIL PROCEDURE

### Rule 60. Relief From Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void; ... (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time,.... This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding,...

...the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**§ 1141.23. Award; writing, signature and filing; entry in judgment book; force and effect**

The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. If there is no request for a de novo trial and the award is not vacated, the award shall be entered in the judgment book in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided by Section 1286.2 or Judicial Council rule.

473,

**§ 1286.2. Grounds for vacation of award**

Subject to Section 1286.4, the court shall vacate the award if the court determines that:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was corruption in any of the arbitrators;

(c) The rights of such party were substantially prejudiced by misconduct of a neutral arbitrator;

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; or

(e) The rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

## CALIFORNIA CODE OF CIVIL PROCEDURE

### § 284. Change or substitution; consent; order of court

The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

### § 285. Change or substitution: notice

When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party. Until then he must recognize the former attorney.

## CALIFORNIA CIVIL CODE

### § 3336. Personal property; conversion; presumption

The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

Second—A fair compensation for the time and money properly expended in pursuit of the property.



## **RULES OF PROFESSIONAL CONDUCT**

### **RULE 2-100. COMMUNICATION WITH A REPRESENTED PARTY**

(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

### **RULE 4-100. PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT**

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

(1) Funds reasonably sufficient to pay bank charges.

(2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

## CALIFORNIA CIVIL CODE

### § 47. Privileged publication or broadcast

A privileged publication or broadcast is one made—

1. . . .

2. In any (1) legislative or (2) judicial proceeding, or (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure; . . .

3. In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or (3) who is requested by the person interested to give the information.

## CALIFORNIA CODE OF CIVIL PROCEDURE

### § 340. One year

Within one year:

3. Libel, slander, assault, battery, false imprisonment, seduction, injury or death from wrongful act or neglect, forged or raised checks, injury to animals by feeder or veterinarian. An action for libel, slander, assault,

**§ 1013. Service by mail; procedure; completion; extension of time for exercising right or performing act**

(a) In case of service by mail, the notice or other paper must be deposited in a post office, mailbox, sub-post office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at his office address as last given by him on any document which he has filed in the cause and served on the party making service by mail; otherwise at his place of residence. The service is complete at the time of the deposit, but if,...

**§ 1014. Appearance defined; right to notices before and after appearance**

A defendant appears in an action when he answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon him.

**§ 1015. Service; nonresident party; service on clerk or attorney**

When a plaintiff or a defendant, who has appeared, resides out of the State, and has no attorney in the action or proceeding, the service may be made on the clerk or on the judge where there is no clerk, for him.

**§ 1016. Service; process to bring party into contempt; inapplicability of certain sections**

PRECEDING PROVISIONS NOT TO APPLY TO PROCEEDING TO BRING PARTY INTO CONTEMPT. The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

CALIFORNIA CONSTITUTION, ART. I

**§ 12. Bail; release; exception for certain crimes; excessive bail; recognizance**

Sec. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evidence or the presumption great;

(b) Felony offenses involving acts of violence on another person when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

## RULES FOR JUDICIAL ARBITRATION

### RULE 1613. RULES OF EVIDENCE AT HEARING

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The rules of evidence governing civil actions apply to the conduct of the arbitration hearing, except:

(1) Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident which gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business. The arbitrator shall receive them in evidence if copies have been delivered to all opposing parties at least 20 days prior to the hearing. Any other party may subpoena the author or custodian of the document as a witness and examine the witness as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied (i) by a statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part, and (ii) by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statements of any other witness may be offered and shall be received in evidence if:

(i) they are made by affidavit or by declaration under penalty of perjury,

(ii) copies have been delivered to all opposing parties at least 20 days prior to the hearing, and

(iii) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing.

The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

**§ 1270. Release on own recognizance; authorization by court or magistrate; misdemeanors; right; exception**

(a) Any person, who has been arrested for or charged with an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant, provided that a defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding upon the record that an own recognizance release will not reasonably assure the appearance of the defendant as required. In such event the court shall then set bail and specify the conditions, if any, whereunder the defendant shall be released.

(b) The provisions of Article 9 (commencing with Section 1318) shall apply to any person who is released pursuant to this section.

**§ 1275. Amount of bail; considerations; rejection of bail bond given for consideration, etc., feloniously obtained**

In fixing the amount of bail, the judge or magistrate shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his appearing at the trial or hearing of the case. No bail bond shall be accepted unless the judge or magistrate be convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained by the defendant.

